TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1947

No. 91

ALBERT LEE, PETITIONER,

vs.

STATE OF MISSISSIPPI

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

PETITION FOR CERTIORARI FILED MAY 15, 1947.

CERTIORARI GRANTED JUNE 16, 1947.

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IN THE CIRCUIT COURT, FIRST JUDICIAL DISTRICT, HINDS COUNTY, MISSISSIPPI

No. 13,158

STATE OF MISSISSIPPI

v.

ALBERT LEE

Transcript of Hearing—Filed May 20, 1946

APPEARANCES:

Hon. M. M. McGowan, District Attorney, Seventh Circuit Court, District of Mississippi, Deposit Guaranty Bank Building, Jackson, Mississippi; Hon. John Bell Williams, County Attorney, Hinds County, Raymond, Mississippi,
Appearing for the State of Mississippi.

Hon. Will S. Wells, 513½ E. Capitol, Jackson, Mississippi and Hon. Hugh Barr Miller, 415½ E. Capitol, Jackson, Mississippi,
Appearing for the defendant, Albert Lee.

* * * * * * *

[fols. 108-117] J. R. McLEOD having been first duly sworn, was called as a witness by the State of Mississippi, and testified, as follows:

Direct examination.

* * * * * * *

[fol. 118] (Thereupon, the jury retires from the courtroom and the following proceedings were had and done in the presence of the Court and absence of the jury).

[fol. 119] By Mr. McGowan (Continuing):

Q. Mack?
A. Yes, sir.
Q. You say about two o'clock the next day he talked to Captain Rogers in your presence?

A. Yes, sir, it was sometime between two and three o'clock; I brought him down to the room to question him regarding this charge.

Q. Who took the statement from him?

A. Captain Rogers.

Q. Captain Rogers did the talking to him and you were listening?

A. Yes, sir.

By the Court: You say you brought him down?

A. Yes, sir.

By Mr. McGowan (Continuing):

Q. I will ask you if at that time or at any previous time he had been threatened or subjected to any abuse whatever?

A. No, sir.

Q. Or any threat whatsoever?

A. No, sir.

Q. I will ask you if he was promised any immunity or any reward at any time before that by anybody?

A. No, sir.

Q. I will ask you if what he said to Captain Rogers in your presence was entirely free and voluntary?

[fol. 120] A. Yes, sir.

Q. I will ask you in whose custody he remained from the time he was arrested on the railroad until the time he was turned over to the jailer?

A. He remained in my custody practically all of the time, there were a few minutes I walked off and left him in the custody of Mr. Hall.

Q. At the time you left him in the custody of Mr. Hall, where was that?

A. Bailey Avenue, 1200 block, parked out on the street, and Mr. Hall said he would——

Q. —Who was present there at that time?

A. There was a number of people around there, people of the community were around there.

Q. I will ask you if he was threatened or intimidated or promised any reward or anything of that nature?

A. Not that I know of at any time.

Q. At the time he talked to you and Captain Rogers, I will ask you if he was threatened, intimidated or offered any reward or any character?

A. No, sir.

Q. What he said was said free and voluntarily?

A. Yes, sir.

Q. I will ask you whether or not Captain Rogers is your superior officer?

A. Yes, sir.

By Mr. McGowan: That is all on that.

[fol. 121] By the Court: You want to cross-examine?

By Mr. Wells: Yes, sir.

Cross-examination.

By Mr. Wells:

Q. Mr. McLeod, this prisoner was put in the city jail by you sometime shortly after midnight following his arrest there on June 6th or 7th, whichever it was?

A. Yes, sir.

Q. He was placed in the city jail, which is a jail maintained here by the City of Jackson over the police headquarters, is it not?

A. Yes, sir.

Q. After you placed him in jail, you didn't see him again until shortly after two o'clock the following day?

A. No, sir.

Q. You don't know what happened to him or who talked to him during that morning?

A. No, I don't know.

Q. I will ask you when he talked to you and Mr. Rogers very shortly after two o'clock on the 7th if he didn't inform you then that he had been mistreated that morning by some of the police officers?

A. After we had taken the statement, finished it, he refused to sign it. We asked if we had mistreated him. He said, "No"; he said somebody did mistreat him.

Q. After you had taken the statement from him and asked him to sign it, he said that he would sign it if you [fol. 122] made him, didn't he?

A. Something to that effect.

Q. Said, "I will sign it if you make me"?

A. I believe that is what he said.

Q. Then Mr. Rogers asked him if you or he had mistreated him and he said "No," but he had been mistreated that morning?

A. He said something about somebody had mistreated him that morning, but didn't say who.

Q. He was in jail that morning?

A. That is right.

Q. Nobody had access to him except police officers?

A. That is all.

Q. Mr. McLeod, at the time this boy was in what you call the "Work Room" and you and Mr. Rogers were questioning him, Mr. Rogers was writing something on the typewriter there during the period of that questioning, wasn't he?

A. Yes.

Q. And took down what transpired there?

A. That is right.

Q. And what he took down purported to be what this boy had told you and the questions you had asked him, is that right?

A. It is what he told us.

Q. That is the thing he wouldn't sign?

A. That is right.

Q. Explaining that he would sign it if he was made to sign it?

A. Yes, sir.

Q. That is when he told you he had been mistreated that morning.

[fol. 123] A. Yes, he said someone had done something,

Q. Handled him pretty rough?

A. Somebody had mistreated him.

By Mr. Wells: I believe that is all with Mr. McLeod.

Redirect examination.

By Mr. McGowan:

Q. He didn't say who it was or where it was?

A. No, sir.

Q. He said he would sign it if you made him sign it?

A. Yes, sir.

Q. When he said that Captain Rogers put it aside?

By Mr. Wells: Let him tell it.

By Mr. McGowan (continuing):

Q. What did he do?

A. Put it aside.

Q. What did he say?

A. Said he wouldn't take a statement under those conditions from anybody.

Q. Did he tell you who had done anything to him?

A. No, sir.

Q. Did he tell you what it was?

A. Didn't tell us what it was or who did it.

Recross-examination.

By Mr. Wells:

Q. Mr. McLeod, at the time you were questioning him, you and Mr. Rogers, the Work Room, the doors to that room [fol. 124] were closed?

A. Yes, sir.

Q. That is a small room about 6 by 8?

A. Or 8 by 10, something like that.

Q. You and Mr. Rogers were in there with him during the entire time?

A. Yes, sir.

Q. I believe you said Mr. Hines and possibly Mr. Sutherland were in there at times?

A. There were in there when we first started and they both left.

Q. They are also officers?

A. Yes, sir.

Q. Members of the detective force of the City of Jackson?

A. Yes, sir.

Q. Were you armed, you and Mr. Rogers, at that time?

A. I am pretty sure we were; I don't know whether Mr. Rogers was or not, I had my gun in my scabbard.

Q. It could easily be seen?

A. At that season of the year I am sure it could because I had my coat off.

By Mr. Wells: That is all.

By the Court (continuing):

Q. Did you ask him who it was that had abused him?

A. Yes, sir—I don't recall—I wouldn't want to make a misstatement on that—I don't recall that was asked.

Q. He didn't state who it was?

A. No, sir.

[fol. 125] Q. Did you ask him what was done to him?

A. I asked what was done to him and he said he was hit.

Q. Did he show any signs of having been abused in any way, shape or form?

A. No, sir, didn't see any signs on him.

Q. Did he point out where he had been struck?

A. No, sir.

Q. Did he tell you about that?

A. He just said he had been hit.

By the Court: That is all.

By Mr. Wells (continuing):

Q. Mr. McLeod, did Mr. Rogers take down those questions you asked him about what had happened to him?

A. No, after he said he had been abused no more questions were taken down.

Q. Do you recall when you brought him into the room there what was the first thing said to him?

A. I wouldn't recall, Mr. Wells, because there are always preliminary questions before we start to take a statement from them.

Q. Did you tell him he might as well come on and tell the truth, it would be better for him?

A. I never told one that.

Q. I am talking about him?

A. No, sir.

Q. Did anybody else tell him that?

A. Not that I know of.

Q. Did you tell him he had been identified, he might as [fol. 126] well admit it?

A. Don't think we told him that.

Q. You don't know about that positively?

A. I know I didn't.

Q. Did anybody tell him that in your presence?

A. Not that I remember.

Q. You don't remember—was that your answer?

A. I don't remember if they did or not.

By Mr. Wells: That is all with Mr. McLeod.

(Witness excused.)

By Wr. Wells: We ask leave to offer some proof.

The defendant makes no contention that he was abused after he was placed in jail at night following his arrest, the contention being that the abuse administered to him happened in the day-time on June 7th, while he was in jail.

FRANK ROGERS having been first duly sworn, was called as a witness by the State of Mississippi, and testified, as follows:

Direct examination.

By Mr. McGowan:

Q. You are Captain Frank Rogers?
A. Yes, sir.
Q. You are the head of the Detective Bureau?
A. Yes, sir.
Q. You have the rank of Captain?
A. Yes, sir.
[fol. 127] Q. Jackson Police Department?
A. Yes, sir.
Q. Do you remember the occasion on June 7, 1944, when this defendant, Albert Lee, was questioned at the City Hall?
A. Yes, sir.
Q. State to the Court under what conditions he was questioned there, who did the questioning and where?
A. Mr. McLeod had this boy, Albert Lee, in the adjoining office to my office there. He called me in there about—around three o'clock in the afternoon of June 7th. I started to talking to Albert Lee. I asked him his age and where he lived and told him I wanted him to tell me just what happened out there on Bailey Avenue the night before. I told him that anything he might say would be used or could be used against him in court and wanted him to give me a free and voluntary statement as to what happened. I asked him if he would do so and he replied he would.
Q. Was he threatened in any wise by you or anyone?
A. No, sir, not in my presence he was not; Mr. McLeod and myself were sitting there.
Q. Was he promised any reward?
A. No, sir.
Q. You state what he stated to you was wholly free and voluntary?
A. Yes, sir, Albert stated——

By the Court:

You need not give the statement, it is a question of whether or not it is competent.

By Mr. McGowan (Continuing):

Q. You proceeded to take a statement from him?

[fol. 128] A. Yes, sir.

Q. That was in the office where—between your office and what other office?

A. Adjoining my office, in the room between the Chief's office and my office.

Q. About what time of day?

A. About 3:15 in the afternoon.

Q. Who were present?

A. Mr. McLeod and myself.

Q. During the interview did anyone else come in?

A. I don't remember whether anyone else came in or not.

Q. When you concluded taking the statement, then what transpired?

A. I asked him if he would mind signing the statement after he read it. He said he wouldn't, he wouldn't mind signing it. I asked him if he had been mistreated in any way, if we had mistreated him in any way. He said, "No"; we had been pretty nice to him but that two men had treated him pretty bad "this morning" and when he said that I didn't take any more statement at all; didn't ask him to sign it, didn't ask him anything else but put him back upstairs.

Q. Did he say anything about he would sign it if he had too?

A. I don't remember, I didn't put it down in writing.

Q. Did he tell you who had mistreated him in any way?

A. I don't remember whether I asked him who, I don't think I did.

Q. You were the superior officer present at that time?

A. Yes, sir, I am the man who wrote down what he said.

[fol. 129] By the Court (Continuing):

Q. Mr. Rogers, had you seen this man after his arrest before the time you refer to?

A. I had not seen him up until the time Mr. McLeod had him down.

Q. Where had he been?

A. Upstairs in jail.

Q. Who was the jailer there?

A. I am sure Mr. Young was the jailer if it was in the daytime.

Q. During the daytime?

A. I am pretty sure Mr. Young was the day jailer; I can't say whether or not he was on duty that particular day or not.

Q. Did you, or anyone in your presence or to your knowledge at any time you had the conversation with him or prior to that time; make any threats toward him whatever?

A. No, sir.

Q. Did you promise him any reward?

A. Didn't promise anything at all.

Q. Did you hold out any hope of immunity from prosecution?

A. No, sir.

Q. Whatever statement he made you say was made entirely free and voluntarily?

A. Yes, sir.

Q. Now when he stated he had been treated roughly by two men, do you recall whether you asked him what was done to him?

A. No, sir, I do not.

Q. Did you observe or did he point out to you any bruises or scars or evidence of having been mistreated?

[fol. 130] A. If I remember right, this boy didn't have any marks on him whatever, or not a mark on him, no bruises or anything else.

By the Court:

Do you want to cross-examine him, Mr. Wells?

Cross-examination.

By Mr. Wells:

Q. Mr. Rogers, as I understand you, when you finished taking the statement you asked him if he would sign it. Did he say he would sign it if you made him?

A. I don't remember that. I don't think so. I put down in my statement what his answer was at that time.

Q. You don't recall he said he would sign it if you made him sign it?

A. No, I do not.

Q. Whatever he did say, Mr. McLeod was present and heard it?

A. Mr. McLeod was there.

Q. Then you asked him if you had mistreated him in any way, he told *hou* that you had been nice to him but two men had treated him kind of bad that morning?

A. Had treated him kind of bad, that was his words.

Q. When that happened you quit asking him any questions at all?

A. That is right.

Q. And had Mr. McLeod take him back to jail?

A. Yes, sir.

Q. And no questions were asked by you or Mr. McLeod in your presence about the circumstances of that treatment?

A. I don't remember; I might have asked him a question or two but I don't remember just what it was.

[fol. 131] Q. Your best recollection is you didn't ask him who had mistreated him or what had happened to him, but just sent him back up stairs?

A. That is true.

Redirect examination.

By Mr. McGowan:

Q. Mr. Rogers, at the time he made this statement he had already told all he had to say to you about it, is that correct?

A. Yes, sir; that is down there at the last part.

Q. And it was made in response to your questions if anybody had treated him wrong?

A. That is right.

Q. What, if anything, did he say that had to do with causing him to make this statement to you?

A. About being mistreated?

Q. What, if anything, did he say that had to do with making the statement he had already made?

A. I don't know that that had anything to do with it.

Q. Did he say that had anything to do with it?

A. I don't remember, I don't remember what happened after that. I just had Mr. McLeod take him back upstairs.

By the Court (Continuing):

Q. Had he made any statement to you whatever—did you or not ask him whether or not he was willing to make a statement?

A. I asked him that, if he was willing to make a free and voluntary statement.

Q. Did you ask him at that time whether or not he had been abused by anybody?

A. Wasn't anything said about that until at the end, I asked him if he had been abused in any way.

[fol. 132] Recross-examination.

By Mr. Wells:

Q. Mr. Rogers, when a man is put in jail in the city, any of the detectives, if it is a case where the detectives take jurisdiction or are interested in investigating, any detective is at liberty to go up in the jail and talk to and interview any prisoner?

A. Yes.

Redirect examination.

By Mr. McGowan:

Q. He was put in jail about what time?

A. I don't know, sir, just exactly when he was placed in jail that night.

Q. Do you know who booked him and put him in jail?

A. No, sir, I don't; I don't know who booked him on the docket.

By the Court (Continuing):

Q. Do you know of your own knowledge whether anyone talked to him during the morning before you saw him and, if so, who it was?

A. No, sir.

Q. You have no information about that?

A. No, sir; I don't know who talked to him or who got him out, to my own knowledge.

(Witness excused.)

By Mr. Wells: I don't mind putting the defendant on the stand. Come around, Albert.

ALBERT LEE, having been first duly sworn, was called as [fol. 133] a witness in his own behalf, and testified as follows:

Direct examination.

By Mr. Wells:

Q. Your name is Albert Lee?

A. Yes, sir.

Q. Albert, you are the defendant in this case, are you?

A. Yes, sir.

Q. Albert, along about midnight on June 6th of last year were you arrested by Mr. McLeod, one of the police officers of Jackson, up near Ash Street, up there by the railroad?

A. Yes, sir.

Q. Placed in jail by him?

A. Yes, sir.

Q. In the city jail?

A. Yes, sir.

Q. After you were put in jail that night were you questioned by anybody that night?

A. No, sir.

Q. Were you questioned by anybody the next morning?

A. Yes, sir.

Q. About what time?

A. About 9 o'clock or 9:30.

Q. Around 9 or 9:30 the next morning?

A. Yes, sir.

Q. Where were you when you were questioned?

A. Brought out of the little room I was in and brought down to the jailer's desk. It was in the room where the jailer sits.

Q. It was in the room where the jailer stays?

A. Yes, sir.

[fol. 134] Q. Who were the men who brought you there?

A. I don't know, sir.

Q. Were they police officers?

A. Yes, sir, they were plain-clothes men; I am pretty sure of it.

Q. Didn't have on uniform?

A. No, sir.

Q. Do you know who those two men were?

A. No, sir, I don't.

Q. Was Mr. McLeod one of them?

A. No, sir.

Q. Have you seen those two officers here in the courtroom since you have been here?

A. Not since I have been here.

Q. Just tell Judge Gillespie what happened that morning.

A. I was brought down into that room.

By the Court (Continuing):

Q. You were brought down into the room downstairs?

A. No, sir, I was still upstairs. I was brought from the——

Q. Cell?

A. Yes, sir.

Q. To the jailer's desk?

A. Yes, sir. One of the men had a slip of paper about that long (indicating) with two pencil marks on it. He told me to hold up my foot. He put the pencil mark under the bottom of my shoe. He said, "It fits, all right."

Q. Talk louder.

A. He says, "It fits all right, this is the one." I said, "No, sir, you have the wrong one, I didn't do anything." [fol. 135] He says, "Yes, you did." I said, "No, sir, I didn't." The- he hit me.

By Mr. Wells (Continuing):

Q. Where did he hit you?

A. The first time right there (indicating).

Q. What did he hit you with?

A. His fist.

Q. Go ahead.

A. I fell back, he pulled me up to him again; he said, "Did you do it?" I said, "No, sir," and he hit me again.

Q. Where did he hit you?

A. In my stomach.

Q. What with?

A. His fist.

Q. Go ahead.

A. He shoved me off of him and he said, "If you go down stairs and say you didn't do it, it will be mighty bad for you."

Q. "If you go downstairs and say you didn't do it, it will be mighty bad for you"?

A. Yes, sir.

Q. That was when?
A. That morning about 9 or 9:30.
Q. About 9:30?
A. Yes, sir.
Q. What was done with you then?
A. Taken back to my cell.
Q. Put back in your cell?
A. Yes, sir.
Q. Did anybody then talk to you again that day?
[fol. 136] A. Mr. McLeod came up to my cell that evening about two or three o'clock and got me.
Q. Took you downstairs?
A. Yes, sir.
Q. Is that when you were questioned by Mr. Rogers and Mr. McLeod?
A. Yes, sir.
Q. When you went in the room there where Mr. Rogers and Mr. McLeod questioned you, I will ask you whether or not you were scared?
A. Yes, sir, I was really scared.
Q. What was it the officer had told you upstairs after he had hit you?
A. He told me if I go downstairs and say I didn't do it, it would be mighty bad for me.
Q. Were your finger prints taken?
A. Yes, sir.
Q. When were they taken?
A. They were taken that morning.
Q. That morning before you went down?
A. Before those men questioned me.
Q. You mean before these two officers questioned you?
A. Yes, sir.
Q. Where were those finger prints taken?
A. Down stairs.
Q. They took you downstairs and took your finger prints?
A. Yes, sir.
Q. The same two men who took you downstairs to take your finger prints, are they the same men you just detailed what happened?
A. No, sir; one man came up; he was in his shirt sleeves, [fol. 137] and he took me downstairs and took my finger prints.
Q. After he took your finger prints, what did he do?
A. Brought me back up stairs.

Q. The two men you have testified about mistreating you weren't present when your finger prints were taken, I take it?

A. No, sir.

Q. While you were down there and after Mr. McLeod and Mr. Rogers questioned you, did you tell them anything about having been mistreated?

A. Yes, sir.

Q. Was the statement you gave Mr. Rogers and Mr. McLeod entirely free and voluntary, or did what had happened that morning have anything to do with it?

A. I was really scared when I went down there after the man told me it would be mighty bad for me.

Q. Mr. Rogers and Mr. McLeod didn't see you down there that morning?

A. No, sir.

Cross-examination.

By Mr. McGowan:

Q. Who were those two men?

A. I don't know, sir.

Q. What did they look like?

A. Both of them were heavy set.

Q. Great big fellows?

A. Yes, sir.

Q. Weigh about 220?

A. I don't know, sir.

Q. Do you know Mr. Hines?

[fol. 138] A. No, sir.

Q. Do you know Mr. Sutherland?

A. No, sir.

Q. Mr. Bruton?

A. Yes, sir, I saw Mr. Bruton a few minutes ago.

Q. He didn't do anything to you at all?

A. No, sir.

Q. Mr. McLeod didn't do anything to you at all?

A. No, sir.

Q. When he arrested you that night and put you in jail?

A. No, sir.

Q. What were they doing taking your foot print upstairs in the jailer's office?

A. I don't know, sir.

Q. They took finger prints downstairs?

A. Yes, sir.

Q. You say they took it on a slip of paper and pencil—foot prints?

A. They had a slip of paper.

Q. They didn't take you downstairs?

A. No, sir.

Q. Where was the jailer?

A. He was sitting in there.

Q. Mr. Young?

A. I don't know who he was.

Q. What was he doing?

A. I don't recall, I am pretty sure he was in there.

Q. Just sitting there at the desk?

A. Yes, sir.

[fol. 139] Q. You say he took your foot print and then hit you in the stomach.

A. Yes, sir.

Q. Because you wouldn't say you did it?

A. Yes, sir.

Q. You never told you did it?

A. No, sir.

Q. Then he made you afraid?

A. Yes, sir.

Q. Why didn't you tell him you did it when he made you afraid?

A. He told me, he said, "If you go down stairs and say you didn't do it, it will be mighty bad for you."

Q. Weren't you more afraid then than when they took you downstairs?

A. No, sir, I wouldn't say so.

Q. When he was hitting you in the stomach you weren't afraid enough to tell him?

A. No, sir.

Q. That afternoon you got afraid again?

A. Yes, sir.

Q. The man who hit you in the stomach didn't make you afraid?

A. What he had said made me afraid.

Q. Why didn't you tell him then you did it if you were afraid?

A. Sir?

Q. Why didn't you tell him then you did it if you were afraid, if he hit you in the stomach? Why did you want to

wait until that afternoon when somebody was treating you nice to be afraid?

[fol. 140] By Mr. Wells: We don't think that is competent.

By the Court: Overrule the objection.

By Mr. McGowan (Continuing):

Q. You say he hit you in the stomach and you were afraid?

A. Yes, sir.

Q. You never would tell him you did it?

A. No, sir.

Q. That afternoon there were two men who were treating you very nice?

A. Yes, sir.

Q. And while they were treating you very nice you became afraid and told them about it, is that what you tell the Judge?

A. Would you say that again?

Q. I say, when the man hit you in the stomach you were afraid, that is right?

A. Yes, sir.

Q. But you were not afraid enough to tell them you did it, isn't that correct?

A. Yes, sir, that is right.

Q. Then that afternoon, when you were down talking to Captain Rogers, who was treating you nice, then you got afraid and told it?

A. I didn't tell him I did it.

Q. You told him you did it, didn't you tell Captain Rogers you did it? Didn't you go over the details of it?

A. No, sir. He was asking me some questions. I don't [fols. 141-151] know what all he asked and all I said, but I didn't admit I did it.

Q. You went over the details with him?

A. No, sir.

Q. About going to more than one house?

A. I don't know all he said, but I didn't admit it.

Q. You went through the details, about going to one house, looking in the window, some girls saying something to you, and then going to the second house above there?

A. No, sir.

Q. Opening the screen, striking the girl, and then going back down south to Ash Street? Didn't you go over all of those details?

A. No, sir.

Q. Told him about the bottle?

A. No, sir.

Q. Told him where the bottle was?

A. I didn't admit at any time I did it.

Q. Didn't you outline all of those details I have just outlined to you?

A. No, sir.

Q. Didn't tell him where he could find the bottle?

A. No, sir.

Q. What kind of bottle it was?

A. No, sir.

Q. Didn't tell him what you did to the screen?

A. No, sir.

Q. Didn't tell him how you opened it?

A. No, sir.

* * * * * * * *

[fol. 152] J. A. Young having been first duly sworn, was called as a witness by the State of Mississippi, and testified, as follows:

Direct examination.

By Mr. McGowan:

Q. You are Mr. Young, what are your initials?

A. J. A.

Q. Are you the City Jailer?

A. Day Jailer.

Q. Were you the day jailer on the 7th of June, 1944?

[fol. 153] A. Yes, sir, I suppose so; I don't remember that exact date.

Q. Were you employed as jailer at that time?

A. That is right.

Q. As day jailer?

A. Yes, sir.

Q. What time did you come on every morning?

A. Five o'clock.

Q. What time did you get off every evening?

By the Court (Continuing):

Q. Is there any way for you to determine whether you were on duty from your records?

A. May I say a word? At that date I could have been in Memphis in the hospital with my wife.

Q. Who would have been on duty during the day while you were gone?

A. I couldn't say.

Q. Is there a record in the Police Department to show who was on duty?

A. I suppose so.

Q. Where is Mr. Rogers?

By Mr. McGowan (Continuing):

Q. Do you remember the date you were out of town about that time?

A. No, sir, I don't.

Q. Were you out of town any time about that time?

A. I was out a number of times; I don't remember the exact date.

Q. Do you remember this defendant, Albert Lee, being booked over there as a prisoner?

[fol. 154] A. His face is familiar, yes, sir.

Q. Do you reme-ber—have you any recollection of his case having been booked there?

A. I don't believe I do, sir.

Q. State whether or not this defendant was ever brought into your office by two detectives?

A. He could have been, yes, sir.

Q. State whether or not this occurred then—that he was brought into your office by the two detectives——

By Mr. Wells: Object to this type of examination, it is leading.

By the Court: Don't lead the witness.

By Mr. McGowan (Continuing):

Q. I will ask you if anything was ever done to him in your office?

A. I would say not.

Q. In your presence?

A. No, sir.

Q. Was he ever struck by anybody in your presence at any time?

A. No, sir.

By Mr. McGowan: That is all.

Cross-examination.

By Mr. Wells:

Q. Mr. Young, you have no independent recollection of this boy being in jail at all, do you?

A. Not on any specific date.

[fol. 155] Q. At any time do you have any independent recollection of him being there?

A. His face is familiar.

Q. In other words, you see that negro sitting over there and to you his face is familiar?

A. That is right.

Q. But you don't have any independent recollection of whether you saw him in the jail or somewhere else?

A. He has been in jail there, yes.

Q. You have an independent recollection of having seen him in jail?

A. His face is familiar.

Q. That is what I mean, not any more than his face is familiar?

A. That is right.

Q. You don't remember the circumstances about him having been placed in jail?

A. I don't believe I do, Mr. Wells.

Q. I will ask you if any person has ever been hit in your presence by the police officers in jail?

A. Not unmercifully, no, sir.

Q. I don't mean unmercifully, Mr. Young. I mean if any person has been hit?

By Mr. McGowan: Object; that hasn't anything to do with the case.

By the Court: I will let him answer.

By Mr. Wells (Continuing):

Q. I will ask you if any person has ever been hit in the [fol. 156] jail there in your presence?

A. Nothing more than in self-protection, sir.

Q. Don't misunderstand. I am not criticizing the officers for it, but there have been prisoners who have been hit by officers up in the jail?

A. Not in my office.

Q. Not in your office—sir? You didn't answer?

A. Ask the question again.

Q. I say—how long have you been jailer?

A. Three years.

Q. During those three years, I will ask you—I don't want to know who—I will ask you if there have been prisoners who have been struck by police officers in your office?

A. Nothing more than in self-protection.

Q. There have been prisoners who have been struck by officers?

A. Just what do you mean by being struck?

A. Hit in any way with hands, slapped, hit with their fists, or hit in any way?

A. I will say this, that that is something I don't allow in the office there in the jail, prisoners to be hit.

Q. I understand that; and if an officer did that you would call him down?

A. That is right.

Q. If it was done in your presence?

A. That is correct.

Q. But there have been prisoners who have been struck or slapped in the jail by officers?

A. That is right.

[fol. 157] Q. You have no independent recollection, as I understand it, of this boy being in jail except that his face is familiar?

A. That is right.

Q. You don't have any knowledge or idea now when he was in the city jail, do you?

A. I wouldn't say.

Q. You are not positive now that you even were on duty on the 7th of June of 1944?

A. No, sir.

Q. Mr. Young, when a prisoner is put in jail, if he is booked on a charge for investigation, any of the police officers have the right and the privilege of coming up in the jail and talking to them or questioning them?

A. That is right.

Q. You don't make any question of that at all when they come up to see them?

A. No.

Q. In other words, if one of the police officers should come to the jail and say he wanted to see a certain prisoner, he could see him without any questions asked?

A. Yes, sir.

Q. There are times when officers come up and talk to prisoners when you are busy about your duties there in the jail and you pay no attention to them? Don't you at times?

A. It is possible.

Q. What I mean is, it is not part of your duty to supervise and oversee and watch the officers when they are talking to prisoners, but if they wanted to talk to a prisoner, they go on and talk to the prisoner, and you don't question their actions?

[fol. 158] A. They usually carry them downstairs.

Q. They usually carry them downstairs, but there are times when they talk to them up there?

A. Yes, sir.

Q. You don't, of course, question the authority of the officers—they are police officers just like you are a police officer?

A. How do you mean that?

Q. I mean by that, Mr. Young, this: If on June 7, 1944, you had been on duty or were on duty and this boy here was a prisoner in the jail and two officers of the detective bureau would come up stairs to talk to him, they would have a perfect right to go do that?

A. That is right.

Q. They could do that in your presence or out of your presence, whichever happened to be convenient at the time?

A. That is right.

Q. There are times when you are called on to leave the upstairs of the jail and go down and have business in the sergeant's office and leave the detective or other officers up there, isn't there?

A. That is right.

Q. Or there may be times when you would have to go into the kitchen or back into the jail and leave those officers with prisoners they were talking to?

A. It is possible, sir.

Q. Isn't it often done, Mr. Young?

A. Occasionally, yes.

Q. In other words, when an officer, a police officer, comes up into the jail to question a prisoner, you are not under

[fol. 159] instructions and it is not a part of your duty to remain present all of the time to see what goes on, is it?

A. Is it necessary for me to answer that?

By the Court: Yes, sir, it is necessary to answer all of these questions.

A. I thought he was questioning me on this particular case.

By the Court: Yes, all of the questions.

A. Ask the question again, please.

By Mr. Wells (Continuing):

Q. I say, Mr. Young, when a police officer, detective, or uniformed man, comes up into the jail to question a prisoner up there, it is not part of your duty and you are not instructed to remain present all of the time that questioning is going on, are you?

A. As much as possible.

Q. Who gives you those instructions?

A. The Chief.

Q. To remain present as much as possible?

A. That is right.

Q. So long as it does not interfere with your regular jailer's duties?

A. That is part of the duties.

Q. But there are occasions when you are mighty busy up there?

A. Yes, sir.

Q. It is a full time, busy man's job?

A. That is right.

Q. And there are occasions when officers question prisoners up there that you can't be right there all of the time, aren't there?

[fol. 160] A. It is possible, yes, sir.

Q. I say there are times when that is the situation, aren't there?

A. Do I stay with you when you come up to talk——

By the Court: That isn't the question.

(The stenographer reads the last question.)

A. It seems the questions leads to the duties.

By the Court: Yes, sir, that is what he is inquiring into.

(The stenographer reads the last two questions:

"Q. And there are occasions when officers question prisoners up there that you can't be right there all of the time, aren't there?

"A. It is possible, yes, sir.

"Q. I say there are times when that is the situation, aren't there?")

A. That is correct, sir.

By Mr. Wells:

Q. I am not suggesting, I don't mean——

A. —You know yourself you have been up there and I try to cooperate one hundred percent.

By the Court: The point is, Mr. Young, I have to know the answer to the question—not what Mr. Wells know-, or anybody else says.

By Mr. Wells: I would like to say this for the benefit of the record: There is no attempt to suggest Mr. Young is not a very diligent jailer and on the job. He is certainly a [fol. 161] very diligent, excellent jailer and on the job.

By the Court: That is true but he was confused as to whether he was required to answer the questions.

A. Beg your pardon. I don't mean to not answer your questions correctly, but I may become a little confused on a case like this. This is my first time.

By the Court: That is all right.

A. What I couldn't understand was the question concerning the duties over there.

By the Court: It did have a bearing on the matter we are now investigating, that is the reason he is permitted to ask these questions.

By Mr. Wells: That is all.

By the Court: Mr. Young, let me ask you a question.

A. Yes, sir.

Q. Has this defendant, this boy sitting over there, ever at any time been in your office with two other officers and been struck there in your office?

A. I would say not, sir.

Redirect examination.

By Mr. McGowan:

Q. You stated to Mr. Wells you had never seen any prisoners struck except—what did you say—self-preservation?
A. I said self-defense, did I not?
Q. Except in self-protection, what did you mean by that?
[fol. 162] A. Well, sir, if you were over there and saw, you would find out we have to manhandle a few to protect ourselves.
Q. Do they ever hit the officers first?
A. Very often, sir.
Q. Is that what you mean by self-protection?
A. That is right, sir.

By Mr. McGowan: That is all.

Recross-examination.

By Mr. Wells:

Q. You get a drunk over there once in a while and it is a regular bear fight to get him in there?

(No answer.)

Redirect examination.

By Mr. McGowan:

Q. I will ask you, Mr. Young, if you keep a record which will disclose the days that you are on duty?
A. Me.
Q. Yes.
A. I do not, no, sir.
Q. What is this you have in your hand?
A. That is the police record that is kept downstairs; I don't keep that record.
Q. I will ask you if the Police Department keeps a record?
A. The Police Department does keep the record, yes, sir.
Q. As to what policeman or police officer or jailer signs on at that time.
A. That is right.
Q. What are your initials?
[fol. 163] A. J. A.
Q. What is your badge number?

A. 208.

Q. I will ask you if this is the record kept over there in the Police Department?

A. That is right.

Q. I will ask you to examine that and see whether or not you were on duty on the 7th of June, 1944?

A. I signed that, yes, sir.

Q. You signed that in your own handwriting?

A. Yes, sir.

Q. I will ask you were you on duty on June 7, 1944?

A. I must have been.

By Mr. McGowan: That is all.

(Witness excused.)

* * * * * * *

[fols. 164-292] ORDER ADMITTING TESTIMONY AND OVERULING OBJECTION

By the Court: This testimony is admissible, gentlemen. The objection is overruled.

* * * * * * *

[fols. 293-296] IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

No. 13158

STATE

vs.

ALBERT LEE

INSTRUCTION No. 1—REFUSED—Filed December 14, 1945

The Court Instructs the jury to find the defendant not guilty.

[fol. 297] [File endorsement omitted]

IN THE SUPREME COURT OF MISSISSIPPI

No. 36,278

ALBERT LEE, Appellant,

versus

STATE OF MISSISSIPPI, Appellee

ASSIGNMENT OF ERRORS—Filed September 23, 1946

Comes now the defendant in the above styled and numbered cause, Albert Lee, by his attorney, and assigns as errors in the judgment of the Circuit Court of the First Judicial District of Hinds County, Mississippi, convicting and sentencing him of assault with intent to rape, the following, to-wit:

I

The Court erred in overruling the motion by the accused, at the conclusion of the State's evidence-in-chief, to exclude the State's testimony and dismiss and discharge the accused, because the State failed to prove the corpus delicti aliunde the purported confession of the accused.

II

The Court erred in refusing to grant the peremptory instruction, as requested by the accused, at the close of the trial, directing the jury to return a verdict of not guilty, because the State wholly failed to prove the corpus delicti aliunde the purported confession of the accused, the said [fol. 298] instruction being marked "Instruction No. 1—Refused," and filed with the record in this case, and further the State's evidence was insufficient to support a conviction of assault with intent to rape.

III

The court erred in overruling the motion of the accused to exclude the testimony of Miss Nadine Wade for the State, because such testimony was clearly incompetent and immaterial, and was very prejudicial to the rights of the accused.

IV

The court erred in admitting the testimony of J. R. McLeod and B. Frank Rogers concerning the purported confession because such purported confession had been extorted by duress, fear, threats, and physical violence.

V

The court erred in permitting the State to reopen its case and to admit the testimony of Bessie Glade Dubois and Mrs. Dee (Clara) Dubois, as to the previous chaste character of Bessie Glade Dubois, after the State and the Accused had both rested, after the State had put on rebuttal testimony, both sides having thereupon again rested, and after the instructions had been prepared, submitted to the court, and some of the instructions had been approved by the court; such procedure was clearly an abuse of discretion by the trial judge, and was prejudicial to the rights of the accused herein.

VI

The verdict of the jury was clearly contrary to the instructions of the Court that announce the law governing the issues involved in this case, and such verdict of the jury [fol. 299] shows that the jury wholly disregarded such proper instructions in arriving at its verdict; further, the verdict of the jury is contrary to the overwhelming weight of the evidence, and is not supported by any competent, believable, credible evidence.

VII

The court erred in passing judgment and in sentencing the defendant as having been guilty of the offense charged because the proof offered could sustain only a misdemeanor.

VIII

The verdict of the jury was clearly contrary to the law and the evidence.

IX

The court erred in overruling the motion of the accused to exclude the testimony of Mrs. Dee (Clara) Dubois and Bessie Glade Dubois, because such evidence was not in rebuttal, but was original evidence, and was offered after

the State and the accused had twice rested their cases, and after instructions had been prepared, submitted and partially approved.

X

The court erred in excluding evidence offered on behalf of the accused, as shown by the stenographer's notes here exhibited to the court, and to which rulings of the Court the accused duly excepted and his exceptions were duly allowed.

XI

The court erred in admitting evidence offered on behalf of the State over the objections duly made by the accused, as shown by the stenographer's notes here exhibited to the Court, and to which rulings of the Court the accused duly excepted and his exceptions were duly allowed.

[fol. 300] XII

And for other reasons to be shown on the hearing hereof.

Wherefore, for the causes aforesaid, the verdict and judgment should be reversed and set aside, and appellant discharged or a new trial granted.

Respectfully submitted, Albert Lee, Appellant, by Will S. Wells, His Attorney.

CERTIFICATE

STATE OF MISSISSIPPI,
County of Hinds:

I, the undersigned Will S. Wells, attorney for Albert Lee, Appellant, in the above entitled and numbered cause, hereby certify that I have this day mailed, postage prepaid, a true copy of the above and foregoing assignment of errors to the Honorable Greek L. Rice, Attorney General of the State of Mississippi, New Capitol Building, Jackson, Mississippi.

This, the 11th day of October, A. D. 1946.

Will S. Wells.

[fol. 301] IN THE SUPREME COURT OF MISSISSIPPI

No. 36,378

In Banc; 15956, Alexander, J.

ALBERT LEE

vs.

STATE

OPINION—Filed February 24, 1947

The appellant was convicted of an assault with intent to ravish a female of previous chaste character, under Code 1942, Section 2361. The assigned errors which we shall discuss are: 1) the failure of the State to establish the corpus delicti; 2) the admission of a confession by accused; 3) admission of certain testimony; 4) the granting of the State's motion to re-open its case after both sides had rested; and 5) sentence under the wrong statute.

The following facts were testified to by witnesses for the State. The victim was awakened by severe blows upon her head evidently from an empty soft drink bottle. The screen window had been forced open and she saw a man at the window in the act of escaping. Neighbors saw a man leaving the premises at the time of the assault and the officers soon thereafter arrested appellant nearby and found him panting and out of breath as if he had been running and with his shoes and the lower part of his trousers wet.

Appellant was placed in jail and on the afternoon of the following day he was interrogated by two officers to whom [fol. 302] he confessed that it was he who had broken in the room and struck the victim three times while she was asleep in bed; that he had watched and waited outside while she prepared for bed, and that his intent was to ravish. There is no question whether any coercion was used by these officers, but, on the contrary, defendant testified they had 'been nice to him' and had explained that his statement would be used against him and that such statement would be wholly voluntary. The details of the confession had never been suggested or known by anyone other than the defendant. When he was requested to sign the statement after its reduction to writing, he refused to do so stating that during the morning two officers in the room and pres-

ence of the jailer 'had treated him kind of bad'. The interview was thereupon closed and his signature was not insisted upon.

The defendant testified that during the morning referred to, two plain clothes men had brought him to the office of the jailer and demanded that he confess the crime, and struck him twice with the warning that if he went 'down stairs and said he didn't do it, it will be mighty bad for you.' The said detectives were not introduced and the jailer denied that this incident occurred. The trial judge thereupon admitted the confession into the record.

The conduct of the two detectives, if true, would of course be indefensible and would warrant and receive our condemnation. Yet the issue of fact as well as credibility was for the trial judge upon such preliminary qualification, and we are not willing to disturb his conclusion. Street v. State, 26 So. (2d) 678.

[fol. 303] The confession being admitted, we are of the opinion that it was available to support the testimony adduced aliunde in establishing the corpus delicti. There was no room for douht that the room had been buglariously entered and the assault and battery committed. The purpose of such entry and assault is necessarily provable circumstantially. Here the existence of a criminal intent is clear and a specific intent to ravish is, at least, consistent with the proven facts and reasonably inferable. A burglarious breaking is evidence of some unlawful purpose, Thompson v. State, 124 Miss. 463, 86 So. 811; Moseley v. State, 92 Miss. 250, 45 So. 833. In the former an inference of intent to ravish was held justified, while in the latter the finding of a motive of theft rather than rape was approved by the Court, yet such issue involved was one of guilt and not of the corpus delicti. The direct proof was sufficient to admit the confession in aid of proof as to the body of the crime. Keeton v. State, 175 Miss. 631, 647, 167 So. 68; Gross v. State, 191 Miss. 383, 2 So. (2d) 818; Phillips v. State, 196 Miss. 194, 16 So. (2d) 630.

There was no error in admitting the testimony of Miss Nadine Wade for the State. Her testimony was that she saw, about the time of the assault, someone dressed in dark trousers 'dart around the corner' of her house, which was two doors away from that of the victim. Such testimony was either relevant as incriminating or was entirely harmless. Hence its admission was not error.

After both sides had rested the State moved to reopen to introduce testimony it had overlooked, in the direct examination of the victim and her mother, to establish [fol. 304] previous chastity. The trial court did not abuse its discretion in allowing this to be done. Ample opportunity for cross-examination was allowed. This proof was an element of the accusation of which defendant had been duly informed. Roney v. State, 167 Miss. 827, 150 So. 774; Brown v. State, 173 Miss. 542, 158 So. 339 (rev. on other grounds, 80 L. Ed. 682); Clark v. State, 181 Miss. 455, 180 So. 602. Riddick v. State, 72 Miss. 1008, 16 So. 490, is distinguishable upon its facts, and contained other egregious errors requiring reversal.

The mere probability that appellant could have been prosecuted and sentenced under Code 1942, Section 2011, for assault and battery with a deadly weapon with intent to ravish or under Section 2017 for an attempt, is met by the fact that he was indicted, tried, convicted and sentenced under Section 2361.

Affirmed.

[File endorsement omitted.]

[fol. 305] IN THE SUPREME COURT OF MISSISSIPPI

36278

ALBERT LEE

vs.

STATE

JUDGMENT—February 24, 1947

This cause having been submitted at a former day of this term on the record herein from the Circuit Court of Hinds County and this court having sufficiently examined and considered the same and being of the opinion that there is no error therein doth order and adjudge that the judgment of said Circuit Court rendered in this cause at the November 1945 Term—a conviction of assault with intent to rape and a sentence to 18 years in the State Penitentiary—be and the same is hereby affirmed. It is further ordered and adjudged that the County of Hinds do pay the costs of this appeal to be taxed, etc.

[fol. 306] IN THE SUPREME COURT OF MISSISSIPPI

No. 36,278

In Banc: 16007

ALBERT LEE

vs.

STATE OF MISSISSIPPI

McGEHEE, J.:

OPINION ON SUGGESTION OF ERROR—Filed April 14, 1947

We are urged to reconsider the question of whether or not the confession of the accused, which was testified to by the officers, was made freely and voluntarily. The proof on behalf of the State on that issue is that a statement was made by the accused in the presence of officers McLeod and Rogers, which was reduced to writing, but which he refused to sign, stating that "two men had treated him kind of bad during the forenoon" of that day; that thereupon officer Rogers stated that he "would not take a statement under those conditions from anybody," and the accused was then returned to his cell. The written confession, not having been signed, the details of the same were testified to by the officers at the trial.

The accused testified that these two men who had interviewed him during the forenoon were plain clothese men, and that they struck him at least twice when he refused to admit that he had committed the crime charged against him. [fol. 307] He further testified that after they had thus treated him, they said; "If you go downstairs and say you did not do it, it will be mighty bad for you."

There was no testimony to the effect that he was mistreated by officers McLeod and Rogers on the occasion when they took his statement down in writing. The trial judge was zealous in his effort to try to ascertain the truth as to whether or not this confession was made freely and voluntarily, and he caused the jailer to be called as a witness, whom the accused said was present at the time he was mistreated, and the jailer testified in substance that while he had no distinct recollection of the occasion, or whether he was even present at the time the interview was had, he was

positive that no one had struck the accused on the occasion complained of or at any other time in his presence, although he admitted that sometimes prisoners were assaulted but "not unmercifully." However, he was not asked as to whether one of the two men who were said to have mistreated the prisoner made the statement to him that "If you go downstairs and say you did not do it, it will be mighty bad for you." Therefore the statement of the accused in that behalf is wholly undisputed in this record.

However, the accused steadfastly testified, both upon the hearing before the trial judge in the absence of the jury and on the trial on the merits before the jury, that he did not in fact admit to officers McLeod and Rogers that he had committed the crime. That is to say, he denied having made to them a confession of the details about which they testified. Therefore, his contention here that the confession testified to by the officers was not made at all, and [fol. 308] his contention that such confession was not freely and voluntarily made on account of the previous mistreatment accorded to him prior thereto, cannot both be true. As was said in the case of Upshur v. Commonwealth, 197 S. E. (Va.) 435, "If the defendant made no confession, it is evident that neither fear nor favor moved him. If he did make the confession, it is equally clear that his testimony upon trial was false. The successive positions of the defendant are not only inconsistent with each other, but they are mutually contradictory. To sustain his subsequent contention, he asks us to disregard his evidence, and accept as true the evidence of the officers that a confession was made, but to refuse to accept their evidence that it was voluntarily made."

If the accused had not denied having made any confession at all, we would feel constrained to reverse the conviction herein because of the fact that his testimony as to the threat made to him during the forenoon by the plain clothes men is wholly undisputed, the jailer not having been asked about this threat, and having testified only that he was not struck by anyone in his presence after his arrest for this crime. But, we think that one accused of crime cannot be heard to say that he did not make a confession at all, and at the same time contend that an alleged confession was made under the inducement of fear. We do not mean by this to say that one who claims to have been acting under fear when he makes statements which involve his guilt of crime

cannot be heard to dispute that *some* of the statements embodied in an alleged confession were not actually made as disclosed by a written statement which he may or may not [fol. 309] have signed, or as testified to by the officers as having been orally made, but we limit this holding to a case where an accused denies having made any statements in an alleged confession, and at the same time contends that he was acting under fear when he made them.

For the reasons hereinbefore stated, we are of the opinion that the suggestion of error should be, and the same hereby is, overruled.

Suggestion of error overruled.

[File endorsement omitted.]

[fol. 310] IN THE SUPREME COURT OF MISSISSIPPI

—. 36278

ALBERT LEE

vs.

STATE

ORDER OVERRULING SUGGESTION OF ERROR—April 14, 1947

This cause this day came on to be heard on the suggestion of error filed herein and this court having sufficiently examined and considered the same and being of the opinion that the same should be overruled doth order and adjudge that said suggestion of error be and the same is hereby overruled.

[fol. 311] [File endorsement omitted]

[fol. 312] IN THE SUPREME COURT OF THE UNITED STATES

ALBERT LEE, Appellant,

vs.

STATE OF MISSISSIPPI, Appellee

Petition for Appeal, Statement, Assignments of Error, and Prayer for Reversal—Filed April 17, 1947

PETITION FOR APPEAL

Being aggrieved by a judgment of the Supreme Court of the State of Mississippi, affirming a verdict and judgment of the Circuit Court of the First Judicial District of Hinds County, Mississippi, convicting the appellant on a charge of assault with intent to rape and sentencing him to eighteen (18) years in the Mississippi State Penitentiary, which judgment was rendered by the said Supreme Court on February 24, 1947, and which judgment was made final by the action of the said Supreme Court in overruling the Suggestion of Error of the appellant on April 14, 1947, appellant prays that an appeal to the Supreme Court of the United States be allowed herein, that an order be granted permitting such appeal with supersedeas and stay of execution, and that the appeal be permitted *in forma pauperis*, pursuant to the provisions of 28 U. S. C. A. Sections 832 et seq.

STATEMENT

This case is one in which is challenged the action of the Circuit Court of the First Judicial District of Hinds County, [fol. 313] Mississippi in admitting, over the objection of appellant, certain alleged confessions obtained by duress and under coercion from the said appellant contrary to the equal protection and due process clauses of the 14th Amendment of the Constitution of the United States, as construed in the case of *Brown et al.* v. *State of Mississippi*, 297 U. S. 278, 80 L. Ed. 682, and the action of the Supreme Court of the State of Mississippi in affirming the conviction and judgment of the Circuit Court aforesaid, the opinion of the Supreme Court of the State of Mississippi being rendered on February 24, 1947 and said opinion is attached as Appendix A to the jurisdictional statement filed herein, and is reported in — Miss. —, 29 So. (2d) 211.

A Suggestion of Error was filed in the Supreme Court of the State of Mississippi in due course under the rules thereof, and was overruled on April 14, 1947. The opinion of the Supreme Court of the State of Mississippi overruling the Suggestion of Error is attached as Appendix B to the jurisdictional statement filed herein and reported in — Miss. —, 29 So. (2d) —.

The execution of the sentence of the appellant to eighteen (18) years in the Mississippi State Penitentiary will become effective upon execution of the mandate of the Supreme Court of Mississippi.

The order and judgment of affirmance by the said Supreme Court of Mississippi became a final judgment on April 14, 1947, the date of the overruling of the Suggestion of Error.

ASSIGNMENT OF ERROR

Now comes the appellant in the above cause and files herewith, together with said petition for appeal, these assignments of error and say—that there are errors committed by the courts below in the record and proceedings of the above entitled cause, and for the purpose of having the same reviewed in the Supreme Court of the United States, make—the following assignments:

I

The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the trial court should have sustained appellant's objections to the introduction of evidence obtained by alleged confessions obtained from the appellants by threats, duress, coercion and violence.

[fol. 314]

II

The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the trial court should have entered a directed verdict, there being no evidence to sustain the charges alleged in the indictment at the close of the state's evidence.

III

The Supreme Court of Mississippi erred in failing to reverse the judgment of the trial court because the trial court

should have granted the peremptory instruction requested by the appellant at the close of all the evidence.

IV

The Supreme Court of Mississippi erred in affirming the judgment of the trial court in that the trial court in refusing to exclude the incompetent evidence of the alleged confession obtained by force, violence, coercion, duress and threats, abridged appellant's rights under the equal protection and due process clauses of the 14th Amendment — Constitution.

V

The Supreme Court of Mississippi erred in entering its judgment and the opinion affirming the action of the trial court, in sustaining the conviction of the appellant because the conviction was based entirely upon alleged confession obtained from the appellant by threats, duress, coercion and violence upon the appellant by public officials, and thereby denied to the appellant the rights and privileges as a citizen guaranteed under the equal protection and due process clauses of the 14th Amendment of the United States Constitution.

VI

The Supreme Court of Mississippi erred in failing to hold that the confession knowingly used on the part of the state in its prosecution thus illegally obtained from appellant through force and violence, denied equal protection and due process of law to the appellant.

VII

The judgment and opinion of the Supreme Court of the State of Mississippi are a denial of equal protection and due process of law, contrary to the requirements of the 14th Amendment to the Constitution of the United States.

[fol. 315]

VIII

The Supreme Court of Mississippi erred in refusing to reverse the lower court for having admitted the alleged confession upon the ground that the appellant denied that he had ever made the confession.

PRAYER FOR REVERSAL

For and on account of the above errors, the appellant prays that the said judgment of the Supreme Court of the State of Mississippi, be reviewed by the Supreme Court of the United States, that such judgment be reversed, and that judgment be rendered in favor of the appellant, or if mistaken, that the appellant be accorded a new trial.

Respectfully submitted, Forrest B. Jackson, Attorney for Appellant, by Forrest B. Jackson, of Counsel.

[fol. 316] [File endorsement omitted]

IN THE SUPREME COURT OF THE UNITED STATES

ALBERT LEE, Appellant,

vs.

STATE OF MISSISSIPPI, Appellee

ORDER ALLOWING APPEAL—Filed April 17, 1947

The appellant in the above entitled cause has prayed for the allowance of an appeal to the Supreme Court of the United States from the judgment made and entered by the Supreme Court of the State of Mississippi on February 24, 1947, affirming the judgment of the Circuit Court of the First Judicial District of Hinds County, Mississippi, which judgment was made final by the Supreme Court of the State of Mississippi on April 14, 1947 overruling the appellant's Suggestion of Error, the said cause being entitled *Albert Lee vs. State of Mississippi.*

It appearing that the appellant in the Assignments of Error and in the briefs and argument in said cause contended that the conviction of the said appellant was based upon alleged confession unlawfully and unconstitutionally obtained through threats, duress, fear and coercion, and that the use of the same as the sole basis to sustain a submission of said cause to the jury abridged and denied appellant the rights to equal protection and due process of law guaranteed by the 14th Amendment of the Constitution of the United States, which contentions were overruled by the decisions and judgments of the Supreme Court of the State of Mississippi.

It appearing that appellant has presented and filed a petition for appeal to the Supreme Court of the United States, a statement, assignments of error, prayer for re-
[fols. 317-351] versal and jurisdictional statement, together with affidavit of appellant that he is a citizen of the United States and a poor person entitled to prosecute his appeal to the Supreme Court of the United States in forma pauperis, all within three months from the date that said judgment of the Supreme Court of Mississippi became final by overruling of the suggestion of error on April 14, 1947 pursuant to the statutes and the rules of the Supreme Court of the United States in such cases made and provided.

It is now hereby ordered that an appeal be and the same is hereby allowed to the Supreme Court of the United States from the judgment of the Supreme Court of the State of Mississippi, as provided by law; and,

It is further ordered that the clerk of the Supreme Court of Mississippi shall prepare and certify to the transcript of the record, proceedings and judgments in said cause, in accordance with the praecipe filed herein, and transmit the same to the Supreme Court of the United States within twenty days from this date; and,

It is further ordered, and the court does find, that the appellant is a citizen and poor person, unable to prepay cost or to give security therefor, and that he is entitled to prosecute his said appeal to the Supreme Court of the United States in forma pauperis.

It is further ordered that the execution of the judgment of the Circuit Court of the First Judicial District of Hinds County, Mississippi, as affirmed by the Supreme Court of Mississippi, be stayed and held in abeyance until this appeal is reviewed and acted upon by the Supreme Court of the United States.

Ordered and adjudged, this the 16th day of April, A. D., 1947.

Sydney Smith, Chief Justice of the Supreme Court of the State of Mississippi.

[fol. 352] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 353] IN THE SUPREME COURT OF THE UNITED STATES

DEFINITE STATEMENT OF POINTS RELIED UPON AND DESIGNATION OF PARTS OF RECORD NECESSARY FOR CONSIDERATION PURSUANT TO RULE 13, PARAGRAPH 9—Filed May 16, 1947

May It Please the Court:

The appellant, Albert Lee, pursuant to the provisions of Rule 13, Paragraph 9 of the Revised Rules of the Supreme Court of the United States hereby gives a definite statement of points on which he intends to rely and a designation of the part of the record herein necessary for the consideration of such points. The appellant also refers to his petition for appeal, assignment of errors, prayer for reversal, and jurisdictional statement herein before filed.

Definite Statement of Points on Which Appellant Intends to Rely

I

The confession obtained from the appellant under the circumstances set forth in the statement of jurisdiction, and as shown by the record, was obtained by duress and through [fol. 354] coercion, and was not freely and voluntarily made, and, therefore, should not have been admitted in evidence, and to admit it as evidence was a denial of the equal protection and due process clauses of the 14th Amendment to the Constitution of the United States.

Malinski vs. *State of New York*, 65 S. Ct. 781, 324 U. S. 401, 89 L. Ed. 1029.

Ashcraft vs. *State of Tennessee*, 322 U. S. 143, 88 L. Ed. 1192.

Ward vs. *State of Texas*, 62 S. Ct. 1139, 316 U. S. 547, 86 L. Ed. 1663.

Lisenba vs. *State of California*, 62 S. Ct. 280, 314 U. S. 219, 86 L. Ed. 166.

Chambers vs. *State of Florida*, 60 S. Ct. 472, 309 U. S. 227, 84 L. Ed. 716.

Brown vs. *State of Mississippi*, 297 U. S. 278, 80 L. Ed. 682.

II

The decision of the Supreme Court of Mississippi is in itself a denial of the equal protection and due process of

law clauses of the 14th Amendment to the Constitution of the United States. See authorities cited above.

III

The appellant's denial of having made the coerced confession does not bar him from urging that the state's use of the confession for the purpose of obtaining his conviction was a denial of due process of law.

White vs. *Texas*, 310 U. S. 530, 84 L. Ed. 1342, 60 S. Ct. 1032.

Ashcraft vs. *State of Tennessee*, 322 U. S. 143, 88 L. Ed. 1192.

Designation of Parts of Record Necessary for Consideration

The appellant respectfully designates the following parts of the typewritten record sent up from the Supreme Court of the State of Mississippi, which he deems necessary for the consideration of the points relied upon:

1. Assignment of errors in the Supreme Court of Mississippi (typewritten transcript 297-300).

2. Opinion of the Supreme Court of Mississippi (type-[fol. 355] written transcript 301-304).

3. Judgment of the Supreme Court of Mississippi (typewritten transcript 305).

4. Opinion of the Supreme Court of Mississippi on Suggestion of error (typewritten transcript 306-309).

5. Judgment of the Supreme Court of Mississippi overruling the suggestion of error (typewritten transcript 310).

6. Petition for appeal to the Supreme Court of the United States, assignments of error, and prayer for reversal (typewritten transcript 311-315).

7. Order allowing appeal with stay of execution (typewritten transcript 316-317).

8. Statement disclosing jurisdictional basis for review and other matters required by Rule 12, Section 1, as amended (typewritten transcript 325-349).

9. Notice calling appellee's attention to Paragraph 3 of Rule 12 (typewritten transcript 321-322).

10. Testimony of the following witnesses (typewritten transcript 119-164):

(a) J. R. McLeod (typewritten transcript 119-126);

(b) Frank Rogers (typewritten transcript 126-132);

(c) Albert Lee (typewritten transcript 132-141);

(d) J. A. Young (typewritten transcript 152-163).

11. The ruling of the trial court admitting the confession and overruling appellant's objection thereto (typewritten transcript 164).

12. Peremptory instruction requested by the appellant and refused by the trial court (typewritten transcript 293).

Appellant respectfully requests that the foregoing be printed by the clerk for consideration on appeal.

Respectfully submitted, Albert Lee, Appellant, Forrest B. Jackson, Attorney for Appellant, by Forrest B. Jackson, of Counsel.

[fol. 356] I, Forrest B. Jackson, of counsel for appellant, hereby certify that I have this day personally served a true and correct copy of the above and foregoing statement of points relied upon and designation of the parts of the record by delivering a true and correct copy thereof to the Honorable Greek L. Rice, Attorney-General, for the State of Mississippi, he being counsel of record for appellee, the State of Mississippi.

This the 10th day of May, 1947.

Forrest B. Jackson, of Counsel.

Acceptance of Service

The undersigned, Greek L. Rice, Attorney-General of the State of Mississippi, does hereby acknowledge the receipt, and accept the service of appellant's definite statement of points relied upon and designation of parts of the record necessary for consideration pursuant to Rule 13, Paragraph 9.

Greek L. Rice, by John Kuyhendall, Jr., Assistant Attorney General, Attorney-General, State of Mississippi.

May 10, 1947.

[fol. 356a] [File endorsement omitted.]

[fol. 357] SUPREME COURT OF THE UNITED STATES

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS—June 16, 1947

On Consideration of the motion for leave to proceed further herein in forma pauperis,

It Is Ordered by this Court that the said motion be, and the same is hereby, granted.

[fol. 358] SUPREME COURT OF THE UNITED STATES

Appeal from the Supreme Court of the State of Mississippi

ORDER DISMISSING APPEAL AND GRANTING CERTIORARI—June 16, 1947

This cause came on to be heard on the transcript of the record from the Supreme Court of the State of Mississippi, and was duly submitted.

On consideration whereof, It is now here ordered by this Court that the appeal herein be, and the same is hereby, dismissed for the want of jurisdiction.

Treating the papers whereon the appeal was allowed as a petition for writ of certiorari as required by Sec. 237(c) of the Judicial Code as amended, 28 U. S. C., Sec 344(c), certiorari is granted, and the case is assigned for argument immediately following No. 1123, Haley vs. State of Ohio.

Endorsed on Cover: In forma pauperis. Enter Forrest B. Jackson. File No. 52,241 Mississippi, Supreme Court, Term No. 91. Albert Lee, Petitioner, vs. State of Mississippi. Filed May 15, 1947. Term No. 91 O. T. 1947.

AUTHORITIES

AUTHORITIES

POINT II

The decision of the Supreme Court of Mississippi in refusing to reverse the trial court for having allowed the alleged confession to be introduced as evidence of the petitioner's guilt in order to obtain his conviction; and in basing such refusal solely upon the ground that the petitioner had denied making the confession, is in itself a denial of due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution 36

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 91

ALBERT LEE,

Petitioner,

vs.

STATE OF MISSISSIPPI,

Respondent

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

BRIEF FOR PETITIONER

Opinions

The original opinion of the Supreme Court of Mississippi affirming the petitioner's conviction is *Lee* v. *State*, — Miss. —, 29 So. (2d) 211, and appears in the transcript of record, pages 30-32. The opinion of the Supreme Court of Mississippi overruling the petitioner's suggestion of error and making the judgment of said court final is *Lee* v. *State*, — Miss. —, 30 So. (2d) 74 and appears in the transcript of record, pages 33-35.

the petitioner's signature to the alleged confession, Captain Rogers, the senior officer present stating that: "he wouldn't take a statement under those conditions from anybody" (R. 5). The petitioner was then returned to his cell and no further confession was made.

The petitioner then appeared as a witness in his own behalf and testified that between 9:00 and 9:30 on the morning following his arrest (R. 12), he was taken from his cell and carried to the jailer's room where he was questioned by two plain-clothes police officers (R. 12, 13). That the said officers confronted the petitioner with a slip of paper with pencil marks on it, and after measuring the petitioner's foot with the said paper, stated: "It fits all right, this is the one" (R. 13). When the petitioner denied doing anything, he was struck by one of the officers. The petitioner again denied his guilt and was again struck in the stomach with the fist of one of the officers who made the statement: "If you go downstairs and say you didn't do it, it will be mighty bad for you" (R. 13). The petitioner was then carried back to his cell where he remained until two or three o'clock that afternoon when officer McLeod came to the cell and took the petitioner downstairs for questioning (R. 14); the petitioner stating: "I was really scared when I went down there after the man told me it would be mighty bad for me" (R. 15). On his direct examination, the petitioner made no mention of any one other than the two plain-clothes officers being present at the time he was struck and threatened; but upon cross-examination in answer to the District Attorney's question of whether the jailer was present, the petitioner stated: "I don't recall, I am pretty sure he was in there" (R. 16). On cross-examination, the petitioner also denied having admitted his guilt to Captain Rogers and Officer McLeod, stating: "He was asking me some questions. I don't know what all he asked and all I said, but I didn't admit I did it" (R. 17).

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 91

Petition not printed

ALBERT LEE,

Petitioner,

vs.

STATE OF MISSISSIPPI,

Respondent

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

BRIEF FOR PETITIONER

FORREST B. JACKSON,
Counsel for Petitioner.

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Jurisdictional Grounds

The petitioner, Albert Lee, a negro boy seventeen years of age, was indicted by the Grand Jury of the First Judicial District of Hinds County, Mississippi on a charge of assault with intent to rape a female of previous chaste character under Section 2361, Mississippi Code of 1942. The petitioner entered a plea of not guilty and a trial was had at the regular November, 1945 Criminal Term of the Circuit Court in and for the First Judicial District of Hinds County, Mississippi.

During the course of the trial, the State offered in evidence an alleged confession obtained from the petitioner by J. R. McLeod and Captain Frank Rogers, both of whom were detectives in the Police Department of the City of Jackson, Mississippi. The petitioner objected to their testifying as to the alleged confession, contending that the alleged confession was obtained as a result of duress, threats and violence inflicted upon the petitioner by police officers during the morning preceding the afternoon that the alleged confession was obtained. At this point, the jury retired from the court room and a preliminary hearing was had as to whether the alleged confession had been voluntarily made. The court, after hearing the evidence of the two aforementioned detectives, the city jailer and the petitioner, ruled that the confession was admissible, and it was introduced as evidence of the petitioner's guilt in order to obtain a conviction.

At the conclusion of the State's evidence in chief, the petitioner moved for a dismissal, which motion was denied; at the conclusion of all the evidence, a peremptory instruction was presented and refused, and all exceptions required by law were duly taken. The jury found the petitioner guilty as charged and his punishment was fixed at eighteen years in the Mississippi State Penitentiary. The judgment

was entered accordingly. An appeal to the Supreme Court of Mississippi in *forma pauperis* was prosecuted and a stay of execution was had under Section 1175, Mississippi Code of 1942.

In the fourth assignment of error filed in the Supreme Court of Mississippi, the petitioner submitted that the Circuit Court of the First Judicial District of Hinds County, Mississippi had erred in allowing the alleged confession to be introduced in evidence because it had been extorted by duress, fear, threats and physical violence; and in point four of the original appellate brief, the petitioner urged that the admission of the alleged confession was in violation of the petitioner's right to equal protection and due process of law as guaranteed to the petitioner by the Fourteenth Amendment of the Constitution of the United States.

The Supreme Court considered the assignments of error, decided against the contention of the petitioner and affirmed the conviction with a written opinion (appearing on pages 30-32 of the transcript of record). A suggestion of error under the rules of practice and procedure in the Supreme Court of the State of Mississippi was duly and timely filed, the petitioner again presenting the question of his having been denied of the equal protection and due process of law guaranteed by the Fourteenth Amendment of the United States Constitution, and on April 14, 1947, the Supreme Court of Mississippi overruled the said suggestion of error and affirmed its former opinion with an opinion appearing on pages 33-35 of the transcript of record.

Thereby, the court of last resort in the State of Mississippi decided against the contention of the petitioner and held that the admission of the alleged confession was not a denial of the equal protection and due process of law guaranteed by the Fourteenth Amendment of the United States Constitution.

The petitioner made a timely appeal in *forma pauperis* to the Supreme Court of the United States from the final decision of the Supreme Court of Mississippi, again urging that the admission of the alleged confession as evidence of guilt deprived the petitioner of due process of law; and on June 16, 1947, the Supreme Court of the United States dismissed said appeal, but treating the papers as a petition for writ of certiorari, granted certiorari and assigned the case for hearing.

Statement of the Case

The evidence offered by the State to establish the voluntary character of the petitioner's confession established the following facts: The petitioner, a seventeen year old negro boy, was arrested by the police of the City of Jackson, Mississippi at approximately midnight on the night of June 6, 1944 and shortly thereafter placed in the city jail (R. 3, 12). On the following afternoon, June 7, 1944, between two and three o'clock (R. 2, 7), the petitioner was taken from his cell into a small room six by eight feet, the door was closed (R. 5) and the petitioner was there questioned by two detectives, Captain Rogers and Officer McLeod, at least one of whom was armed (R. 5); and during part of the questioning other officers were present (R. 5). Before the questioning began, the petitioner was warned by Captain Rogers that anything he said could be used against him and that he (Captain Rogers) "wanted him to give me a free and voluntary statement as to what happened" (R. 7). The petitioner then allegedly made a detailed confession of the crime of assault with intent to rape. After the confession was completed, the officers requested that the petitioner sign the statement, and the petitioner stated: "I will sign it if you make me" (R. 3). The petitioner was then asked if he had been mistreated and he stated that he had been mistreated that morning (R. 3, 4, 8). No further attempt was made at that time to obtain

In view of the petitioner's statement that the jailer might have been present at the time the petitioner was struck and threatened, the court directed that the jailer, Mr. J. A. Young, be called as a witness. Mr. Young testified that the petitioner's face was familiar and that the petitioner had been in jail, but that he had no independent recollection of having seen the petitioner in jail other than that his face was familiar (R. 20). After testifying that the petitioner had never been struck in his presence (R. 20), Mr. Young was asked whether any person had ever been hit in his presence by the police officers and Mr. Young replied: "Not unmercifully, no sir" (R. 20). Mr. Young then qualified this statement by saying that the prisoners were struck only in self protection (R. 20, 21); but after being informed by the petitioner's attorney that by "struck" he meant hit with the fist or hands, Mr. Young testified that prisoners had been struck and slapped in his presence by the police officers (R. 21). Mr. Young further testified that the police officers could and often did question prisoners in the jail without his permission and when he was not present (R. 22). At the conclusion of this preliminary hearing, the court ruled that the confession was admissible (R. 26) and it was introduced by the State in its evidence in chief as evidence of the guilt of the petitioner in order to obtain a conviction.

These were the only witnesses called and examined to determine whether the alleged confession had been voluntarily made or had been obtained as a result of force, coercion, violence and threats which would make its use as evidence of guilt, in order to obtain a confession, a denial of due process of law in contravention of the Fourteenth Amendment of the United States Constitution. Both of the detectives testified that they did not know what happened to the petitioner during the morning preceding the afternoon that the alleged confession was obtained. Both of the detectives testified that the petitioner stated to them on the

afternoon the alleged confession was made that he had been mistreated by police officers that morning; and both detectives testified that the petitioner stated in effect that he would sign the alleged confession if they made him. These were the two police officers who were called as witnesses to establish the voluntary character of the petitioner's alleged confession, and yet, Captain Rogers, the senior officer present at the time of the alleged confession, was sufficiently impressed by the petitioner's statements of prior duress occurring that morning that Officer McLeod testified that Captain Rogers said: "He wouldn't take a statement under those conditions from anybody," and Captain Rogers himself stated that after the petitioner referred to his mistreatment on the morning preceding the confession, that he immediately ceased questioning the petitioner and had him returned to his cell.

Thus the petitioner's statements of the prior duress, violence and threats are in no way disputed by the testimony of the two detectives, but is, in fact, corroborated by their testimony in that at the time the alleged confession was made these officers did not feel that they should take a statement at that time, one of the officers stating that: "He wouldn't take a statement under those conditions from anybody." (R. 5). And the officers immediately ceased questioning the petitioner and returned him to his cell. The testimony of these two officers did establish that they did not mistreat the petitioner and the petitioner himself testified that these two officers had been nice to him; but the petitioner's contention that he was struck and threatened by other officers approximately five hours prior to his alleged confession; which force, violence and threats frightened the petitioner, who was a seventeen year old negro boy, to the extent that any statements made by the petitioner were not free and voluntary statements is no way disputed by the Captain Rogers or Officer McLeod.

The only dispute in the testimony arises from the jailer's statements that the petitioner had not been struck by two officers in his presence, but the jailer also testified that the prisoners were at times struck by the police officers (R. 21) and that he had no independent recollection of the petitioner other than that the petitioner's face was familiar and that he had seen the petitioner in jail (R. 20). It should be noted, however, that on his direct examination, the petitioner had made no mention of the jailer being present at the time the petitioner was struck and threatened, and on cross-examination, the petitioner merely stated that: "I am pretty sure he was in there." However, the jailer was not questioned as to whether any threats were made towards the petitioner in his presence, and the Supreme Court of Mississippi in its decision overruling the petitioner's suggestion of error stated that the petitioner's testimony in regard to prior threats was wholly undisputed in the record.

In the original opinion by the Supreme Court of Mississippi, (*Lee* v. *State*, — Miss. —, 29 So. (2d) 211, 212), the court dismissed the petitioner's contention by saying:

> "The conduct of the two detectives, if true, would of course be indefensible and would warrant and receive our condemnation. Yet the issue of fact and as well as credibility was for the trial judge upon such preliminary qualification, and we are not willing to disturb his conclusion. *Street* v. *State*, Miss., 26 So. (2d) 678."

The petitioner, in his suggestion of error filed in the Supreme Court of Mississippi, again presented and urged that the above and foregoing facts as established by the record of the proceedings in the trial court rendered the use of the petitioner's alleged confession as evidence of guilt to obtain a confession, a denial of due process of law.

The court, after considering the petitioner's contention, rendered its decision (*Lee* v. *State*, — Miss. —, 30 So. (2d) 74, 75) saying:

> "There was no testimony to the effect that he was mistreated by officers McLeod and Rogers on the occasion when they took his statement down in writing. The trial judge was zealous in his effort to try to ascertain the truth as to whether or not this confession was made freely and voluntarily, and he caused the jailer to be called as a witness, whom the accused said was present at the time he was mistreated, and the jailer testified in substance that while he had no distinct recollection of the occasion, or whether he was even present at the time the interview was had, he was positive that no one had struck the accused on the occasion complained of or at any other time in his presence, although he admitted that sometimes prisoners were assaulted but 'not unmercifully.' However, he was not asked as to whether one of the two men who were said to have mistreated the prisoner made the statement to him that 'If you go downstairs and say you did not do it, it will be mighty bad for you.' Therefore the statement of the accused in that behalf is wholly undisputed in this record.
>
> "However, the accused steadfastly testified, both upon the hearing before the trial judge in the absence of the jury and on the trial on the merits before the jury, that he did not in fact admit to officers McLeod and Rogers that he had committed the crime. That is to say, he denied having made to them a confession of the details about which they testified. Therefore, his contention here that the confession testified to by the officers was not made at all, and his contention that such confession was not freely and voluntarily made on account of the previous mistreatment accorded to him prior thereto, cannot both be true. As was said in the case of *Upshur* v. *Commonwealth*, 170 Va. 649, 197 S.E. 435, 437, 'If the defendant made no confession, it is

evident that neither fear nor favor moved him. If he did make the confession, it is equally clear that his testimony upon trial was false. The successive positions of the defendant are not only inconsistent with each other, but they are mutually contradictory. To sustain his subsequent contention, he asks us to disregard his evidence, and accept as true the evidence of the officers that a confession was made, but to refuse to accept their evidence that it was voluntarily made.'

"If the accused had not denied having made any confession at all, we would feel constrained to reverse the conviction herein because of the fact that his testimony as to the threat made to him during the forenoon by the plain clothes men is wholly undisputed, the jailer not having been asked about this threat, and having testified only that he was not struck by anyone in his presence after his arrest for this crime. But, we think that one accused of crime cannot be heard to say that he did not make a confession at all, and at the same time contend that an alleged confession was made under the inducement of fear. . . ."

It is upon the above and foregoing facts and the decisions of the Supreme Court of Mississippi that the petitioner presents his contentions that the use of the alleged confession as evidence of guilt to obtain a conviction in the trial court was a denial of due process of law; and that the decisions of the Supreme Court of Mississippi affirming such conviction also amount to a denial of due process of law as guaranteed by the Fourteenth Amendment of the United States Constitution.

Assignment of Errors

The petitioner, in the following brief and argument, will urge that the proceedings in the trial court and in the Supreme Court of the State of Mississippi were erroneous and amounted to a denial of due process of law, as guaran-

teed by the Fourteenth Amendment of the United States Constitution in the following particulars, to-wit;

I

Under the facts disclosed in the printed transcript of record, the admission in evidence of the alleged confession, as evidence of the petitioner's guilt in order to obtain a conviction in the trial court, amounted to a denial of due process of law, as guaranteed by the Fourteenth Amendment to the United States Constitution; and the action of the Supreme Court of Mississippi, in affirming such action of the lower court, amounted to a denial of due process of law, as guaranteed by the Fourteenth Amendment of the United States Constitution.

II

The decision of the Supreme Court of Mississippi in refusing to reverse the trial court for having allowed the alleged confession to be introduced as evidence of the petitioner's guilt in order to obtain his conviction, and in basing such refusal solely upon the ground that the petitioner had denied making the confession, is in itself a denial of due process of law, as guaranteed by the Fourteenth Amendent to the United States Constitution.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 91

ALBERT LEE,

Petitioner,

vs.

STATE OF MISSISSIPPI

Respondent

BRIEF AND ARGUMENT

May it please the Court:

POINT I

Under the Facts Disclosed in the Transcript of Record, the Admission in Evidence of the Alleged Confession as Evidence of the Petitioner's Guilt in Order to Obtain a Conviction in the Trial Court Amounted to a Denial of Due Process of Law as Guaranteed by the Fourteenth Amendment to the United States Constitution.

A. *The Supreme Court of the United States is not precluded by the verdict of the jury or the decision of the highest state court from determining whether a confession, used as evidence of the accused's guilt, was obtained under such circumstances of coercion and duress as to make its use in evidence a denial of due process of law.*

The decisions of the Supreme Court of the United States have established beyond controversy that the Supreme

Court will make an independent review of the circumstances under which a confession was obtained and determine whether the confession was obtained under such circumstances that would render its use in evidence a denial of the accused's constitutional right to due process of law; and such independent review is not precluded by the verdict of the jury nor the decision of the highest state court.

This question was presented to the court in *Ward* v. *State of Texas*, 316 U. S. 547, 86 L. Ed. 1663, 1665, 62 S. Ct. 1139, where it appeared that the Court of Criminal Appeals of Texas had refused to reverse the accused's conviction obtained by the use of a confession because the question of the admissibility of the confession was solely for the jury, and that the jury, after being properly instructed, had found against the accused's contentions. In reversing the Court of Criminal Appeals of Texas, the Supreme Court, speaking through Mr. Justice Byrnes, said:

> "Each state has the right to prescribe the test governing the admissibility of a confession. In various states, there may be various tests. But when, as in this case, the question is properly raised as to whether a defendant had been denied the due process of law guaranteed by the Federal Constitution, we cannot be precluded by the verdict of a jury from determining whether the circumstances under which the confession was made were such that its admission in evidence amounts to a denial of due process."

See also *Brown* v. *State of Mississippi*, 297 U. S. 278, 80 L. Ed. 682, 56 S. Ct. 461.

In considering the same question in *Lisenba* v. *State of California*, 314 U. S. 219, 238, 86 L. Ed. 166, 180, 62 S. Ct. 280, the Court, speaking through Mr. Justice Roberts, said:

> "The concept of due process would void a trial in which, by threats or promises in the presence of the court and jury, a defendant was induced to testify

against himself. The case can stand no better if, by resort to the same means, the defendant is induced to confess and his confession is given in evidence. As we have said, 'due process of law . . . commands that no such practice . . . shall send any accused to his death.'

"Where the claim is that the prisoner's statement has been procured by such means, we are bound to make an independent examination of the record to determine the validity of the claim. The performance of this duty cannot be foreclosed by the finding of a court, or the verdict of a jury, or both. If the evidence bearing upon the question is uncontradicted, the application of the constitutional provision is unembarrassed by a finding or a verdict in a state court; even though, in ruling that the confession was admissible, the very tests were applied in the state court to which we resort to answer the constitutional question.

"There are cases, such as this one, where the evidence as to the methods employed to obtain a confession is conflicting, and in which, although denial of due process was not an issue in the trial, an issue has been resolved by court and jury which involves an answer to the due process question. In such a case, we accept the determination of the trials of fact, unless it is so lacking in support in the evidence that to give it effect would work that fundamental unfairness which is at war with due process.

"Here judge and jury passed on the question whether the petitioner's confessions were freely and voluntarily made, and the test applied in answering that question rendered the decision one that also answered the question whether the use of the confessions involved a denial of due process; this notwithstanding the issues submitted was not eo nomine, one concerning due process. Furthermore, in passing on the petitioner's claim, the Supreme Court of the State found no violation of the Fourteenth Amendment. Our duty, then, is to determine whether the evidence requires that we set aside the finding of two courts and a jury and

adjudge the admission of the confessions so fundamentally unfair, so contrary to the common concept of ordered liberty as to amount to a taking of life without due process of law."

And, in *Chambers* v. *State of Florida*, 309 U. S. 227, 228, 84 L. Ed. 716, 717, 60 S. Ct. 472, Mr. Justice Black, in rendering the Court's opinion, stated the question and the answer thereto as follows:

"The State of Florida challenges our jurisdiction to look behind the judgment below, claiming that the issues of fact upon which petitioners base their claim that due process was denied them have been finally determined, because passed upon by a jury. However, use by a state of an improperly obtained confession may constitute a denial of due process of law as guaranteed in the Fourteenth Amendment. Since petitioners have seasonably asserted the right under the Federal Constitution to have their guilt or innocence of a capital crime determined without reliance upon confessions obtained by means proscribed by the due process clause of the Fourteenth Amendment, we must determine independently whether petitioner's confessions were so obtained, by review of the facts upon which that issue necessarily turns."

See also *White* v. *State of Texas*, 310 U. S. 530, 84 L. Ed. 1342, 60 S. Ct. 1032; *Ashcraft* v. *State of Tennessee*, 322 U. S. 143, 88 L. Ed. 1192, 1196, 64 S. Ct. 921; and *Malinski* v. *State of New York*, 324 U. S. 401, 89 L. Ed. 1029, 1032.

Under these decisions, it is clear that the Supreme Court must make an independent examination of the facts disclosed by the transcript of record and determine from these facts whether the alleged confession, used as evidence of the petitioner's guilt in order to obtain a conviction in the trial court, was obtained under such circumstances as would render the admission of the confession in evidence a denial

of due process of law. Before reviewing the facts so disclosed by the record in the light of previous decisions of this Court, the petitioner would call to the Court's attention the following decisions in which the Supreme Court has had occasion to consider the meaning of the due process clause of the Fourteenth Amendment as applied to the use of confessions in order to obtain a conviction of a person accused of a crime.

B. *The fundamental purpose of the due process clause as applied to criminal justice is to protect an accused person from unfair proceedings and an unfair conviction; and if a confession is obtained under circumstances that would not be condoned at the trial of the cause in the presence of the court and jury, then the use of the confession at the trial of the cause to obtain a conviction is a denial of due process of law.*

The Supreme Court of the United States has, on numerous occasions, set forth its concept of the due process clause of the Fourteenth Amendment of the United States Constitution, specifically pointing out the rights guaranteed by this clause and the purpose to be affected by its enactment. For the sake of brevity, the petitioner would call to the Court's attention only those decisions discussing the purpose of the due process clause in cases in which the question of the purpose and construction of the clause was presented by an accused person who had been convicted by the use of an allegedly coerced confession.

In *Chambers* v. *State of Florida*, 309 U. S. 227, 235, 84 L. Ed. 716, 721, 60 S. Ct. 472, the Supreme Court, speaking through Mr. Justice Black, rendered a decision in which the purpose of the due process clause was discussed at length, saying:

> "The scope and operation of the Fourteenth Amendment have been fruitful sources of controversy in our

constitutional history. However, in view of its historical setting and the wrongs which called it into being, the due process provision of the Fourteenth Amendment—just as that in the Fifth—has led few to doubt that it was intended to guarantee procedural standards adequate and appropriate, then and thereafter, to protect, at all times, people charged with or suspected of crime by those holding positions of power and authority. Tyrannical governments have immemorially utilized dictatorial criminal procedure and punishment to make scapegoats of the weak, or of helpless political, religious, or racial minorities and those who differed, who would not conform and who resisted tyranny. The instruments of such governments were in the main, two. Conduct, innocent when engaged in, was subsequently made by fiat criminally punishable without legislation. And a liberty loving people won the principle that criminal punishments could not be inflicted save for that which proper legislative action had already by 'the law of the land' forbidden when done. But even more was needed. From the popular hatred and adhorrence of illegal confinement, torture and extortion of confessions of violations of the 'law of the land' evolved the fundamental idea that no man's life, liberty or property be forfeited as criminal punishment for violation of that law until there had been a charge fairly made and fairly tried in a public tribunal free of prejudice, passion, excitement and tyrannical power. Thus, as assurance against ancient evils, our country, in order to preserve 'the blessings of liberty,' wrote into its basic law the requirement, among others, that the forfeiture of the lives, liberties or property of people accused of crime can only follow if procedural safeguards of due process have been obeyed."

See also *Adamson* v. *State of California*, 91 L. Ed. 1464, 1471, and *Brown* v. *State of Mississippi*, 297 U. S. 278, 80 L. Ed. 682, 56 S. Ct. 461.

In *Lyons* v. *State of Oklahoma*, 322 U. S. 596, 605, 88 L. Ed. 1481, 1487, 64 S. Ct. 1208, the court, in discussing the purpose of the Fourteenth Amendment, stated:

> "The Fourteenth Amendment is a protection against criminal trials in State Courts conducted in such a manner as amounts to a disregard of 'that fundamental fairness essential to the very concept of justice,' and in a way that 'necessarily prevents a fair trial. . . .'"

In *Lisenba* v. *State of California*, 314 U. S. 219, 236, 86 L. Ed. 166, 180, 62 S. Ct. 280, the court stated the rule as follows:

> "As applied to a criminal trial, denial of due process is the failure to observe that fundamental fairness essential to the very concept of justice. In order to declare a denial of it, we must find that the absence of that fairness fatally infected the trial; the acts complained of must be of such quality as necessarily prevent a fair trial. Such unfairness exists when a coerced confession is used as a means of obtainjng a verdict of guilt. We have so held in every instance in which we have set aside for want of due process a conviction based on a confession."

After setting forth the above quoted standard of due process as applied to criminal proceedings, Mr. Justice Roberts, speaking for the court, advanced the following test to determine whether the standard had been complied with, saying:

> "To extort testimony from a defendant by physical torture in the very presence of the trial tribunal is not due process. The case stands no better if torture induces an extra judicial confession which is used as evidence in the courtroom.
>
> "A trial dominated by mob violence in the courtroom is not such as due process demands. The case can stand no better if mob violence anterior to the

trial is the inducing cause of the defendant's alleged confession.

"If by fraud, collusion, trickery and subordination of perjury on the part of those representing the state, the trial of an accused person results in his conviction, he has been denied due process of law. The case can stand no better if, by the same devices a confession is procured and used in the trial.

"The very concept of due process would void a trial in which by threats or promises in the presence of court and jury a defendant was induced to testify against himself. The case can stand no better if by resort to the same means, the defendant is induced to confess and his confession is given in evidence. . . ."

The same test was applied in the later decision of *Ashcraft* v. *State of Tennessee*, 322 U. S. 143, 154, 88 L. Ed. 1192, 1199, 64 S. Ct. 921, where the court said:

"We think a situation such as that here shown by uncontradicted evidence is so inherently coercive that its very existence is irreconcilable with the possession of mental freedom by a lone suspect against whom its full coercive force is brought to bear. It is inconceivable that any court of justice in the land, conducted as our courts are, open to the public, would permit prosecutors serving in relays to keep the defendant witness under continuous cross-examination for thirty-six hours without rest or sleep in an effort to extract a 'voluntary' confession. Nor can we, consistently with constitutional due process of law, hold voluntary a confession where prosecutors do the same thing away from the restraining influences of a public trial in an open courtroom."

See also Cooley, Constitutional Limitations, 8th Edition (1927) page 647 and *Wood* v. *United States*, 75 App. Dc. 274, 128 Fed. (2d) 265, 271, 141 A.L.R. 1318.

The foregoing decisions clearly establish the authority and duty of the Supreme Court to make an independent examination of the facts disclosed by the record to deter-

mine whether the petitioner has been convicted by a fair trial in which none of the petitioner's constitutional guaranties were abridged; and further establish that if the circumstances under which the alleged confession was obtained were such that would not be allowed in the presence of the court and jury at the trial of the action, then the use of a confession so obtained at the trial of the cause in order to obtain a conviction is a denial of the fundamental fairness of trial guaranteed by the due process clause of the Fourteenth Amendment to the United States Constitution.

C. *The undisputed facts disclosed by the records, and the previous decisions of this court clearly establish that the petitioner has not had such a fair trial as is guaranteed by the due process clause of the Fourteenth Amendment of the United States Constitution.*

In the following decisions, the Supreme Court of the United States has applied its concept of the guaranties of the due process clause of the Fourteenth Amendment to the facts disclosed by the records in such cases and determined whether the accused had received a trial and conviction which conformed to the requirements of the Fourteenth Amendment.

In *Brown* v. *State of Mississippi*, 297 U. S. 278, 80 L. Ed. 682, 56 S. Ct. 461, the Supreme Court held that the petitioner had been denied due process of law in a case very similar to the facts disclosed by the record in the present case. The facts there disclosed were that the three petitioners had been seized on the night of the deceased's murder by enraged citizens who seriously whipped and otherwise mistreated the petitioners and had obtained a confession from each of the petitioners, which confessions were followed by a warning that if the petitioners changed their story in any respect from the confessions they had made, that they would receive the same treatment again. On the following

day, the petitioners were brought before the sheriff of Lauderdale County, the sheriff of Kemper County, a minister and several deputies, and after being warned of their rights and privileges, the petitioners made full and complete confessions, the latter confessions alone being introduced at the trial of the cause. (*Brown* v. *State*, 173 Miss. 542, 158 So. 339, 341). As to the voluntary character of the petitioner's second confessions, the Supreme Court of Mississippi had the following to say in regard to the facts disclosed by the record:

> ". . . They admitted that Sheriff Adcock and his associates treated them kindly and promised to protect them from harm, and that the sheriff told them they did not have to talk, and that if they made any statement, they should tell only the truth about it. Two of them also admitted that during the progress of the trial, and just a short while before they took the witness stand, they had voluntarily told Sheriff Adcock that the confessions they had made to him on the previous Monday night were true."

Thus the alleged coercion of which the petitioners there complained of was inflicted prior to the time the confessions used at the trial were made; and at the time the confessions which were used in the trial were made, the petitioners admitted that they were treated kindly and informed that they need make no statement. In truth, therefore, the Supreme Court of the United States was presented with the same question which is here presented, that being whether the coercion inflicted prior to the time the confessions were made, so tainted the confessions admittedly peaceably obtained, as to render their use, in order to obtain a conviction, a denial of due process of law. In deciding this question, the Supreme Court said at page 687 of 80 L. Ed.:

> "In the instant case, the trial court was fully advised by the undisputed evidence of the way in which the con-

fession had been procured. The trial court knew that there was no other evidence upon which conviction and sentence could be based. Yet it proceeded to permit conviction and to pronounce sentence. The conviction and sentence were void for want of the essential elements of due process, and the proceeding thus vitiated could be challenged in any appropriate manner . . . ."

In *Chambers* v. *State of Florida*, 309 U. S. 227, 241, 84 L. Ed. 716, 724, 60 S. Ct. 472, where it appeared that the confessions were obtained from young negroes who were arrested without warrant and held in jail without formal charges and without being permitted to see or confer with counsel or friends, and who were in fear of mob violence, and who confessed only after five days of fruitless questioning; the court held the confessions involuntary so as to render their use, in order to obtain a conviction, a violation of due process of law, saying:

". . . Due process of law, preserved for all by our constitution, commands that no such practice as that disclosed by this record shall send any accused to his death. No higher duty, no more solemn responsibility, rests upon this court, than that of translating into living law and maintaining this constitutional shield deliberately planned and inscribed for the benefit of every human being subject to our constitution—of whatever race, creed or persuasion."

In *Ward* v. *State of Texas*, 316 U. S. 547, 555, 86 L. Ed. 1663, 1667, 62 S. Ct. 1139, the undisputed evidence showed that the petitioner was arrested without a warrant by a sheriff of another county, that for three days he was driven from county to county, during which time he was continuously questioned by officers who told him of threatened mob violence, and finally made a confession which was used to obtain his conviction. The Supreme Court, in holding

that the use of the confession to obtain a conviction was a denial of due process of law, said:

> "This court has set aside convictions based upon confessions extorted from ignorant persons who have been subjected to persistent and protractive questioning, or who have been threatened with mob violence, or who have been unlawfully held incommunicado without advice of friends or counsel, or who have been taken at night to lonely and isolated places for questioning. Any one of these grounds would be sufficient cause for reversal. All of them are to be found in this case."

In *Ashcraft* v. *State of Tennessee*, 322 U. S. 143, 154, 88 L. Ed. 1192, 1199, 64 S. Ct. 921, the sole grounds for holding the use of a confession to obtain a conviction in the trial court a denial of due process of law was that the evidence disclosed that the petitioner's confession was obtained near the end of a thirty-six hour period of practically continuous questioning under powerful lights by relays of officers, experienced investigators and highly trained lawyers. As to confessions obtained under such circumstances, the court said:

> "We think a situation such as that here shown by uncontradicted evidence is so inherently coercive that its very existence is irreconcilable with the possession of mental freedom by a lone suspect against whom its full coercive force is brought to bear. It is inconceivable that any court of justice in the land, conducted as our courts are, open to the public, would permit prosecutors serving in relays to keep a defendant witness under continuous cross-examination for thirty-six hours without rest or sleep in an effort to extract a 'voluntary' confession. Nor can we, consistently with constitutional due process of law, hold voluntary a confession where prosecutors do the same thing away from the restraining influences of a public trial in an open courtroom."

And in *Malinski* v. *State of New York*, 324 U. S. 401, 406, 89 L. Ed. 1029, 1033, a confession was held to have been coerced so as to make its introduction in evidence a denial of due process of law, where the petitioner upon being arrested was taken to a hotel room where he was stripped and not allowed to put on his clothes for several hours, and was not allowed to see a lawyer or friends other than one charged with participation in the crime, and after being so held from 8:00 a. m. to 6:00 p. m., he confessed although he was not subject to more than occasional questioning or anything more than his own apprehension that he might be beaten. In rendering the opinion, the court laid particular emphasis upon the prosecutor's argument to the jury, saying:

> ". . . If that evidence alone is not sufficient to show that that confession was coerced, the comments of the prosecutor placed it beyond doubt. For in his summation to the jury, he made certain statements which the court of appeals, said were 'indefensible' (292 N. Y. page 373, 55 N. E. (2d) 353) and which we think are sufficient to fill in any gaps on the record before us and to establish that this confession was not made voluntarily. He said that Malinski 'was not hard to break'; that 'he did not care what he did. He knew the cops were going to break him down.' And he added: 'Why this talk about being undressed? Of course, they had a right to undress him to look for bullet scars and keep the clothes off him. That was quite proper police procedure. That is some more psychology—let him sit around with a blanket on him, humiliate him there for a while; let him sit in the corner, let him think he is going to get a shellacing.'
>
> "If we take the prosecutor at his word, the confession of October 23 was the product of fear—one on which we would not permit a person to stand convicted for a crime."

Certainly the above quoted statements of the prosecuting attorney are no more indicative of the fact that the accused

confession was the product of fear, than the statement of Captain Rogers in the present case that "he wouldn't take a statement under those conditions from anybody." (R. 5), which statement was made by Captain Rogers after he had been informed of the petitioner's mistreatment, and at the time that the petitioner's allegedly voluntary confession was made.

Apparently the same question presented to the court in *Brown* v. *State of Mississippi, supra,* was again presented in *White* v. *State of Texas,* 310 U. S. 530, 84 L. Ed. 1342, 60 S. Ct. 1032. There it appeared that prior to the time the confession was made, the petitioner was held in jail several days without charges filed against him and was on several nights taken out of the jail into the woods for questioning by armed officers, and later made a confession to the County Attorney, after being questioned from 11:00 p. m. to 3:00 a. m., during which period the officers who had taken the petitioner out to the woods for questioning were in the room. The petitioner made no contention that any coercion was used by the County Attorney or anyone else at the time the confession was made, and the court made no mention of any coercion at that time in its decision; and as in *Brown* v. *State of Mississippi, supra,* the court held that the introduction of this confession so obtained in order to obtain a conviction was a denial of due process of law.

In *Lyons* v. *State of Oklahoma,* 322 U. S. 596, 602, 88 L. Ed. 1481, 1485, 64 S. Ct. 1208, the Supreme Court held contrary to its previous decisions in *Brown* v. *State of Mississippi, supra,* and *White* v. *State of Texas, supra,* but the decision is readily distinguishable from the present case upon its facts. There the accused had made three confessions, the last two being admitted at the trial of the cause in order to obtain a conviction; the first confession was admittedly involuntary and there was no attempt to use it at the trial. The accused contended that the second confession

was tainted by the coercion affecting the first confession and that under such circumstances the use of the second confession was a denial of due process of law. The facts show that the first confession was obtained after a period of questioning which began at 6:30 in the evening and continued until the following morning between 2:00 and 4 o'clock, during which time a pan of the victim's bones was placed in the accused's lap. The evidence as to alleged physical abuse was in dispute. The second confession was made twelve hours later without any show of force or threats, after the accused had been transferred from the control of the sheriff to that of the warden of the State Penitentiary, with whom the accused was acquainted and from whom he had no reason to fear mistreatment. The third confession was made several days later to a prison guard, an acquaintance of the accused, under circumstances free from coercion. In a decision in which three of the judges dissented, the court held that the accused had not been denied due process of law, saying:

> ". . . Here improper methods were used to obtain a confession, but that confession was not used at the trial. Later, in another place and with different persons present, the accused again told the facts of the crime. Involuntary confessions, of course, may be given either simultaneously with or subsequently to unlawful pressure, force or threats. The question of whether those confessions subsequently given are themselves voluntary depends on the inferences as to the continuing affect of the coercive practices which may fairly be drawn from the surrounding circumstances. *Lisenba* v. *California*, 314 U. S. 219, 240, 86 L. Ed. 166, 182, 62 S. Ct. 280. The voluntary or involuntary character of a confession is determined by a conclusion as to whether the accused, at the time he confesses, is in possession of 'mental freedom' to confess to or deny a suspect participation in a crime. *Ashcraft* v. *Tennessee*, 322 U. S. 143, 154, ante, 1192, 1199, 64 S. Ct. 921,

No. 391, October Term, 1943, decided May 1, 1944; *Hysler* v. *Florida*, 315 U. S. 411, 413, 86 L. Ed. 932, 934, 62 S. Ct. 688.

"When conceded facts exist, which are irreconcilable with such mental freedom, regardless of the contrary conclusion of the trials of fact, whether judge or jury, this court cannot avoid responsibility for such injustice by leaving the burden of adjudication solely in other hands. But where there is a dispute as to whether the facts which are charged to be coercive actually occurred, or where different inferences may fairly be drawn from admitted facts, the trial judge and jury are not only in a better position to appraise the truth or falsity of the defendant's assertions from the demeanor of the witnesses, but the legal duty is upon them to make the decision. *Lisenba* v. *California*, supra. (314 U. S. 238, 86 L. Ed. 180, 62 S. Ct. 280.)

* * * * * * *

"The Fourteenth Amendment does not protect one who has admitted his guilt because of forbidden inducements against the use at the trial of his subsequent confession, under all possible circumstances. The admissibility of the latter confession depends upon the same test—is it voluntary. Of course, the fact that the earlier statement was obtained from the prisoner by coercion is to be considered in appraising the character of the later confession. The effect of earlier abuse may be so clear as to forbid any other inference than that it dominated the mind of the accused to such an extent that the latter confession is involuntary. If the relation between the earlier and later confession is not so close that one must say the facts of one control the character of the other, the inference is one for the triers of fact and their conclusion, in such an uncertain situation, that the confession should be admitted as voluntary, cannot be a denial of due process . . ."

In deciding that the triers of fact were justified in holding that the prior coercion did not bring about the second con-

fession, the Supreme Court laid particular emphasis upon the following facts, which do not appear in the present case; these facts being that the coercion was inflicted twelve hours before the second confession was made, during which time the accused, who was twenty-one years of age, was removed from the sheriff's control in the county jail where the coercion had been inflicted and placed in the State Penitentiary where he was under the control of the warden, and having been a convict in the State Penitentiary, he was acquainted with the warden and had no reason to fear mistreatment from the warden, and finally the fact that several days later he made another admittedly voluntary confession to a prison guard with whom he was acquainted. If the accused said or intimated in any way that the second confession was made as a result of the prior coercion, that fact does not appear in the court's decision, and thus the holding that the prior coercion brought about the subsequent confession would of necessity have to be inferred solely from the facts of the prior coercion.

In the present case, the petitioner was a seventeen year old negro boy who had been arrested at approximately midnight on June 6, 1944 and placed in the city jail (R. 3); between 9:00 and 9:30 on the following morning, he was taken from his cell to the jailer's room where he was twice struck by one of two plain clothes officers and warned that "If you go downstairs and say you didn't do it, it will be mighty bad for you" (R. 13). On the same afternoon between 2:00 and 3 o'clock, the petitioner was taken from his cell to a downstairs room (R. 14) which room was approximately 6 by 8 feet in size (R. 5) where he was questioned by two detectives, at least one of whom was armed (R. 5); and after having been told by Captain Rogers that he, "Wanted him to give me a free and voluntary statement as to what happened" (R. 7). The petitioner then allegedly made a detailed confession. Upon being requested to sign

the confession, the petitioner stated that he would sign it if they made him (R. 3, 4) and then told the officers of his mistreatment by two officers during that morning (R. 3, 4, 8, 10, 15). After being so informed of the petitioners prior mistreatment, Captain Rogers said: "He wouldnt take a statement under those conditions from anybody" (R. 5), and the petitioner was returned to his cell without further questioning (R. 8, 10), but no attempt was made to discover the identity of the officers who had mistreated the petitioner (R. 8).

Under such facts, the petitioner respectfully submits that the present case is readily distinguishable upon its facts from *Lyons* v. *State of Oklahoma, supra*, in that at the time the alleged confession was made, the petitioner of his own volition brought to the interrogators' attention the fact that he had been mistreated and threatened that morning and stated that he would sign the confession if the officers made him do so. This statement alone, which was testified to by Officer McLeod, one of the interrogating officers, who was called by the state to establish the voluntary character of the confession, clearly establishes that the petitioner's confession was made in fear that further coercion would be inflicted, and that the threats made that morning would be carried out; and it is also obvious that the interrogating officers themselves did not feel that the petitioner's confession had been voluntarily made, for Captain Rogers, the other officer, called to establish the voluntary character of the confession, stated that he wouldn't take a statement under those conditions from anybody. With these facts in mind, the petitioner respectfully submits that the decision of the court in the present case should be ruled by *Brown* v. *State of Mississippi, supra*, rather than by *Lyons* v. *State of Oklahoma, supra*.

The petitioner's contention that his confession was made as a result of the threats and violence inflicted upon him

five hours previous to making his alleged confession is further strengthened by the benefit of a presumption of the continued influence of the coercion, to which presumption the defendant is entitled under the decisions of the Supreme Court of Mississippi. The general rule in regard to such a presumption is set out by the author in 22 *Corpus Juris Secundum* 1436, Section 817 (5), as follows:

> "It is not necessary to prove, in the absence of suspicious circumstances, that, from the moment of the prisoner's arrest to that of his confession no inducement was offered or promise made. A confession will be received, if it was in fact voluntary, even though it appears that prior thereto and even after his arrest, accused had been threatened, or promises had been made, without success, for the purpose of procuring a confession; but it must appear that the confession was not made because of the inducements previously offered, as the influence of the promise or threat is presumed to continue it is shown to have been removed."

That Mississippi is in accord with this statement of the rule is obvious from a review of many decisions of the Supreme Court of Mississippi. In *Whitley* v. *State*, 78 Miss. 255, 28 So. 852, 853, 53 L. R. A. 402, where the evidence showed that the defendant's first confession was made upon a threat to deliver the defendant to a mob unless he confessed, a confession made by the defendant on the following day without any threats or violence was held to be presumptively involuntary, the court saying:

> ". . . The second confession was made the next day after the first, and while the parties to whom it was made were in quest of circumstances to fortify the first one, and there is ground to suppose the influence first operating upon the defendant's mind was still affecting it. Where a confession is made under the influence of threats, such influence is presumed to

continue until removed by evidence, and a subsequent confession will not be received unless the influence of the first confession is shown to have been totally done away with by a warning of the consequences of a confession or by other means. 1 Greenl. Ed. Section 221; *Peter* v. *State*, 4 Smedes & M. 31; *Van Buren* v. *Same*, 24 Miss. 516; *Simon* v. *Same*, 37 Miss. 288. Reversed and remanded."

This decision has been followed and approved by the Supreme Court of Mississippi in the following cases: *Reason* v. *State*, 94 Miss. 290, 48 So. 820; *Banks* v. *State*, 93 Miss. 700, 47 So. 437; *Fischer* v. *State*, 145 Miss. 116, 110 So. 361; and in *Jones* v. *State*, 133 Miss. 684, 98 So. 150, 155, the court held that the mere fact that the defendant was warned that the confession could be used against him and that he did not have to make it was not sufficient to make the second confession admissible where it appeared that the defendant had been placed in fear of mob violence and urged to make the first confession which preceded the second confession by approximately one hour. The court, in its decision, said:

"In the case before us, the confession made and taken down by the county attorney followed within less than an hour the confession to the sheriff and detectives, and while the county attorney, with commendable fairness, sought to inform the accused that it was not necessary for him to repeat his confession unless he was willing to do so, and that it would be used against him, and that he had no inducements to offer, still we think this does not make it admissible. In the numerous cases that come here involving confessions, we frequently find confessions unlawfully obtained speedily followed up by a prosecuting officer or a justice of the peace by another one sought to be made competent by stating to the accused that he is under no obligation to make it, and it will be used against him, or that there is no obligation expressed or implied

to aid him in any respect. When a confession is unlawfully obtained, the influence which procured it to be so unlawfully obtained ought to be fully removed in order to make the second one admissible."

It is true that the Supreme Court of the United States, in its decision in *Lyons* v. *Oklahoma*, refused to consider the accused's contention that the earlier abuses rendered the subsequent confession presumptively involuntary, but as stated in that decision, and as has been pointed out above, there was evidence before the court and jury in that case, which if believed, abundantly supported the state's contention that the prior coercion did not bring about the second confession; and as previously stated, there was no mention in the decision that the accused said or in any way indicated that the second confession was made as a result of the prior coercion. However, in the present case, there is ample evidence in the testimony of the two officers who obtained the confession and who were called to establish the voluntary character of the confession to show that the confession here made was obtained as a result of coercion previously inflicted upon the petitioner; and the only evidence in any way tending to show that the prior coercion did not bring about the confession is the fact that the officers obtaining the confession treated the petitioner nicely and warned him of his rights, and the Supreme Court of Mississippi has held such facts do not justify the use of a confession made subsequently to the prior coercion. *Jones* v. *State*, *supra*.

The petitioner respectfully submits that under the foregoing decisions, there is ample undisputed testimony in the record to justify the Supreme Court in reversing the decision of the Supreme Court of Mississippi, affirming the conviction in the trial court. The most outstanding single fact in this regard is that the two officers who had obtained the confession and who were called to establish the voluntary character of the confession both testified that the accused

told them of being mistreated that morning (R. 3, 4, 8, 10); Captain Rogers then said that: "He couldn't take a statement under those conditions from anybody" (R. 5); yet this same officer was depended upon to establish the voluntary character of the confession at the trial. The officers further testified that the petitioner stated he would sign the confession if they made him (R. 3, 4) clearly establishing that the petitioner's statements had been made with the thought that a refusal to make them would result in further abuse. (See *Ward* v. *Texas*, 361 U. S. 457, 495, 86 L. Ed. 1663, 1667, where the court gave particular emphasis to a similar statement.) The testimony of these two officers does not dispute or put in conflict any way the petitioner's statement of prior duress, both of the officers stating that they had not seen the petitioner from the time of his arrest until the time that the confession was made (R. 3, 11). The sole remaining witness examined to determine whether the confession had been voluntarily made was the jailer, and from the jailer's testimony arises the sole dispute in the petitioner's testimony of prior duress and threats, if such a dispute can be said to exist at all. In the petitioner's direct examination, he made no mention of the jailer being present at the time he was struck and threatened, but on cross-examination, the petitioner did state: "I am pretty sure he was in there." (R. 16). The jailer testified that the petitioner had not been struck in his presence (R. 20) but also stated that the petitioner's face was familiar and that the petitioner had been in jail, but that he had no independent recollection of having seen the petitioner in jail other than that his face was familiar (R. 20). After testifying that the petitioner had never been struck in his presence, the jailer was asked whether any person had ever been hit in his presence by the police officers, and he replied: "Not unmercifully, no, sir." (R. 20). The jailer then qualified this statement

by saying that the prisoners were struck only in self protection (R. 20, 21); but after being informed by the petitioner's attorney that by "struck" he meant hit with the fist or hands, the jailer testified that prisoners had been struck and slapped in his presence by the police officers (R. 21). The jailer further testified that the police officers could and often did question prisoners in the jail without his permission and when he was not present (R. 22). The jailer was not questioned as to whether the accused had been threatened in his presence and, therefore, that statement of the petitioner is wholly undisputed in the record.

Taking this evidence of the three witnesses called by the state to establish the voluntary character of the alleged confession, in its most favorable light, it establishes nothing more than that the petitioner was warned of his rights prior to making the confession, that he was treated nicely by the officers who obtained the confession, and that the petitioner was not struck by two plain clothes officers in the presence of the jailer.

The petitioner respectfully submits that under this state of facts, clearly established by the record, that petitioner has not had such a fair trial as is guaranteed by the construction this court has set upon the Fourteenth Amendment to the United States Constitution in its previous decision; that the admission of the confession as evidence of the petitioner's guilt, in order to obtain a conviction in the trial, was a denial of due process of law; and that the decision of the Supreme Court of Mississippi in affirming the conviction obtained in the trial court is also a denial of due process of law. *Brown* v. *State of Mississippi, supra.*

The petitioner would further call to the Court's attention that throughout his petition for appeal, he advanced the contention that there was no evidence apart from the confession sufficient to sustain the petitioner's conviction. The

petitioner again asserts this contention and does not anticipate a denial of said contention by the Attorney General of the State of Mississippi, as counsel for the respondent herein; but in the event that such a denial is made, the petitioner would call to the Court's attention that even though the petitioner has failed to have the entire record printed so that the fact that there was no evidence outside the confession sufficient to sustain his conviction might be presented to the Supreme Court, that this omission does not preclude the duty of the Supreme Court to reverse the petitioner's conviction and the decision of the Supreme Court of Mississippi affirming the conviction in the event that the confession is held to have been improperly admitted in evidence; for it is well settled that in the event a coerced confession is used as evidence of the accused's guilt, the judgment of conviction will be set aside even though the evidence apart from the confession was sufficient to sustain the conviction. *Malinski* v. *State of New York*, 324 U. S. 401, 404, 89 L. Ed. 1029, 1032.

POINT II

The Decision of the Supreme Court of Mississippi in Refusing to Reverse the Trial Court for Having Allowed the Alleged Confession to Be Introduced as Evidence of the Petitioner's Guilt in Order to Obtain His Conviction; and in Basing Such Refusal Solely Upon the Ground That the Petitioner Had Denied Making the Confession, Is in Itself a Denial of Due Process of Law as Guaranteed by the Fourteenth Amendment to the United States Constitution.

The Supreme Court of Mississippi, in its opinion overruling the petitioner's suggestion of error, *Lee* v. *State*, — Miss. —, 30 So. (2d) 74, 75, said:

> "If the accused had not denied having made any confession at all, we would feel constrained to reverse

the conviction herein because of the fact that his testimony as to the threat made to him during the forenoon by the plain clothes men is wholly undisputed, the jailer not having been asked about this threat, and having testified only that he was not struck by anyone in his presence after his arrest for this crime. But, we think that one accused of crime cannot be heard to say that he did not make a confession at all, and at the same time contend that an alleged confession was made under the inducement of fear. We do not mean by this to say that one who claims to have been acting under fear when he makes statements which involve his guilt of crime cannot be heard to dispute that *some* of the statements embodied in an alleged confession were not actually made as disclosed by a written statement which he may or may not have signed, or as testified to by the officers as having been orally made, but we limit this holding to a case where an accused denies having made any statements in an alleged confession, and at the same time contends that he was acting under fear when he made them."

It is obvious from this decision that the court considered the fact of the prior duress and the fact that the petitioner's statements were made as a result of such duress to have been sufficiently established by the record to warrant and demand a reversal of the petitioner's conviction. However, the court refused to so reverse the petitioner's conviction upon the sole ground that the petitioner had denied making any confession, and the petitioner respectfully submits that under the decisions of the Supreme Court of the United States, such a holding in and of itself amounts to a denial of due process of law.

In *White* v. *State of Texas*, 310 U. S. 530, 531, 84 L. Ed. 1342, 1344, 60 S. Ct. 1032, counsel for the State of Texas requested of the court a holding such as that rendered in this cause by the Supreme Court of Mississippi. The

Supreme Court of the United States, speaking through Mr. Justice Black, refused to so hold, saying:

> "The State suggests that there is evidence that petitioner denied ever having made or signed the confession which purported to be signed by his mark. Therefore, it insists that petitioner is barred from urging that the prosecution's use of the confession could have deprived him of due process at his trial. But regardless of petitioner's testimony on this question, the State insisted and offered testimony to establish that the confession was signed by him, and upon this evidence, the confession was submitted to the jury for the purpose of obtaining his conviction. Since, therefore, the confession was presented by the State to the jury as that of the petitioner, we must determine whether the record shows that, if signed at all, the confession was obtained and used in such manner that petitioner's trial fell short of that procedural due process guaranteed by the constitution."

See also *Ashcraft* v. *State of Tennessee*, 322 U. S. 143, 88 L. Ed. 1192, 64 S. Ct. 921, where the petitioner denied having made the confession and the court reversed his conviction without discussing the question here involved.

The petitioner would call to the Court's attention that the Supreme Court of Mississippi, in rendering this decision, based the decision upon and cited as authority therefor the case of *Upshaw* v. *Commonwealth*, 170 Va. 649, 197 S. E. 435, 437, which the petitioner submits is distinguishable upon its facts. The facts there showed that the defendant was convicted of unlawfully manufacturing ardent spirits and after his motion to set aside the verdict had been overruled, he appealed, assigning as error the lower court's action in admitting an alleged confession in evidence. On trial, the defendant's only objection to the admission of the confession was that he had made no confession; but on appeal, the defendant attempted to advance the contention

that a confession had been made, but that it had been made under duress. The appellate court refused to sustain the defendant's contention on appeal because the inconsistency of his contention on appeal was apparent from the record, which showed that the defendant had made no contention at the trial of the cause that the alleged confession was involuntary, and there was no evidence in the record to indicate that it was involuntary. It was in regard to this inconsistency that the court was speaking when it stated the rule upon which the Supreme Court of Mississippi based its refusal to reverse the petitioner's conviction in the present case. That such was the true holding of the court is apparent from the syllabus which states:

> "The Supreme Court of Appeals cannot disregard defendant's evidence before a trial court that he never made confession and accept as true officer's evidence that confession was made, but refused to accept their evidence that it was voluntary, on appeal from judgment on verdict of conviction, as question before jury was whether confession was made, not whether it was voluntary."

The inconsistency in *Upshaw* v. *Commonwealth, supra,* was in the successive positions the defendant took in the trial of the cause and on appeal. The petitioner respectfully submits that in the present case, there is no inconsistency in the contentions he advanced in the trial court. *Blacks Law Dictionary,* 3rd Edition (1933) page 945, defines inconsistency, citing many authorities therefor, as follows:

> "Mutually repugnant or contradictory; contrary; the one to the other, so that both cannot stand, but the acceptance or establishment of the one implies the abrogation or abandonment of the other; as, in speaking of 'inconsistent defenses,' or the repeal by a statute of 'all laws inconsistent herewith' . . ."

At no point in the proceedings in the trial court did the petitioner deny that he made certain statements to Captain Rogers and Officer McLeod on the afternoon that he allegedly made the confession. In regard to his statements to these officers, the petitioner testified: "He was asking me some questions. I don't know what all he asked and all I said, but I didn't admit I did it" (R. 17). If the petitioner had denied even talking to these officers and then advanced the contention that he had confessed or made statements as a result of the prior coercion, the petitioner's contentions would be inconsistent; but under the facts of the present case, the petitioner's contention is nothing more than that although he did make some statements to the officers, the statements did not amount to a confession, and that whatever statements were made, were made as a result of the prior duress, and there is obviously no inconsistency in such a contention. The only inconsistency in the present case is between the officer's testimony that the petitioner confessed, and the petitioner's testimony that he did not confess, and certainly that is not sufficient to justify a refusal to reverse the conviction of an accused person obtained by the use of a confession, which, if made, was admittedly made as a result of coercion and duress. However, the decision of the Supreme Court of Mississippi in effect so holds, for the court found that the evidence of prior coercion was sufficiently established to warrant a reversal of the petitioner's conviction, but refused to reverse the conviction because there was a dispute between the testimony of the officers and the testimony of the petitioner as to whether the petitioner's statements had amounted to a confession.

As has been pointed out previously in this brief and argument, the purpose of the due process clause, as applied to criminal justice, is to assure to every accused the right

to a fair trial. The Supreme Court of Mississippi in its decision has in effect laid down a rule which precludes the court from inquiring into the voluntary character of a confession which is introduced as evidence of the accused's guilt, if the accused denies that he made the confession; and even though the record sufficiently establishes that if the confession was in fact made, it was made under duress.

The petitioner submits that under the decision of this Court in *White* v. *State of Texas, supra*, that where a State uses a confession allegedly made by the accused as evidence of his guilt in order to obtain a conviction, that even though the accused may deny the confession was made, it is incumbent upon the State to establish the voluntary character of the confession in order to assure the accused of that fairness of trial guaranteed by the due process clause of the Fourteenth Amendment of the United States Constitution.

Petitioner would also call to the Court's attention that the decision of the Supreme Court of Mississippi condones the use of a confession known by the prosecuting officers to be a result of coercion to be used at the trial to obtain a conviction of the accused; which petitioner submits has been held by this Court, in its previous decisions, to be a denial of due process of law. In *Mooney* v. *Holohan*, 294 U. S. 103, 112, 79 L. Ed. 791, 794, 55 S. Ct. 340, the Supreme Court held that the constitutional requirement of due process was not satisfied where a conviction was obtained by the presentation of testimony known by the prosecuting officers to be false, saying:

> "Without attempting at this time to deal with the question at length, we deem it sufficient for the present purpose to say that we are unable to approve this narrow view of the requirement of due process. That requirement, in safeguarding the liberty of the citizen

against deprivation through the action of the State, embodies the fundamental conceptions of justice which lie at the base of our civil and political institutions. *Herbert* vs. *Louisiana*, 272 U. S. 312, 316, 317, 71 L. Ed. 270, 273, 47 S. Ct. 103, 48 A. L. R. 1102. It is a requirement that cannot be deemed to be satisfied by mere notice and hearing if a State has contrived a conviction through the pretense of a trial, which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured. Such a contrivance by a State to procure the conviction and imprisonment of a defendant is as inconsistent with the rudimentary demands of justice as is the obtaining of a like result by intimidation. And the action of prosecuting officers on behalf of the State, like that of administrative officers in the execution of its laws, may constitute State action within the purview of the Fourteenth Amendment. That amendment governs any action of a State, 'whether through its legislature, through its court, or through its executive or administrative officers.' *Carter* vs. *Texas*, 177 U. S. 442, 447, 44 L. Ed. 839, 841, 20 S. Ct. 687; *Rogers* vs. *Alabama*, 192, U. S. 226, 231, 48 L. Ed. 417, 419, 24 S. Ct. 257; *Chicago, B. & Q. R. Company* vs. *Chicago*, 166 U. S. 226, 233, 234, 41 L. Ed. 979, 983, 984, 17 S. Ct. 581."

See also *Moore* v. *Dempsey*, 261 U. S. 86, 67 L. Ed. 543, 43 S. Ct. 265; and *Powell* v. *State of Alabama*, 287 U. S. 45, 77 L. Ed. 158, 53 S. St. 55, 84 A. L. R. 527.

And in *Brown* v. *State of Mississippi*, 297 U. S. 278, 287, 80 L. Ed. 682, 687, 56 S. Ct. 461, where the Supreme Court of Mississippi had held that a confession known to be a result of coercion was properly used to obtain a conviction where the accused's attorneys failed to move that the confession be excluded after the involuntary character of the confession had been established, the Supreme Court of the United States reversed the decision of the Supreme

Court of Mississippi, and in reversing, held that the decision of the Supreme Court of Mississippi amounted to a denial of due process of law, saying:

> "In the instant case, the trial court was fully advised by the undisputed evidence of the way in which the confessions had been procured. The trial court knew that there was no other evidence upon which conviction and sentence could be based. Yet it proceeded to permit conviction and to pronounce sentence. The conviction and sentence were void for want of the essential elements of due process, and the proceeding thus vitiated could be challenged in any appropriate manner. *Mooney* vs. *Holohan*, 294 U. S. 103, 79 L. Ed. 791, 55 S. Ct. 340, 98 A. L. R. 406, *supra*. It was challenged before the Supreme Court of the State by the express invocation of the Fourteenth Amendment. That court entertained the challenge, considered the Federal question thus presented, but declined to enforce petitioner's constitutional right. The court thus denied a Federal right fully established and specially set up and claimed, and the judgment must be reversed."

With these authorities in mind, the petitioner respectfully submits that the decision of the Supreme Court of Mississippi, allowing the use of the petitioner's confession as evidence of his guilt, in order to obtain a conviction, where the confession was known to have been a result of coercion, is a denial of due process of law, and that the decision of the Supreme Court of Mississippi affirming the petitioner's conviction in the trial court should, therefore, be reversed.

Conclusion

Under the facts disclosed by the record and the authorities hereinbefore cited, the petitioner respectfully submits that he has been denied that fairness of trial guaranteed to an accused by the Fourteenth Amendment of the United States

Constitution, and that he has been denied of his liberty without due process of law.

Wherefore, petitioner prays that the decision of the Supreme Court of Mississippi affirming petitioner's conviction in the trial court be reversed, and that judgment be rendered in favor of the petitioner, or if mistaken in this, that the cause be remanded and the petitioner accorded a new trial.

Respectfully submitted,

ALBERT LEE,
By FORREST B. JACKSON,
Of Counsel.

FORREST B. JACKSON,
Century Building,
Jackson, Mississippi,
Of Counsel.

I, Forrest B. Jackson, of counsel for the petitioner in the above and foregoing matter, hereby certify that I have this day delivered a true and correct copy of the above and foregoing brief for petitioner to the Honorable Greek L. Rice, Attorney General for the State of Mississippi, counsel for the respondent herein, by personal delivery to him in his office in the New Capitol Building, Jackson, Mississippi.

This the 9th day of September, A. D., 1947.

FORREST B. JACKSON,
Of Counsel for Petitioner.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 91

ALBERT LEE,

Petitioner,

vs.

STATE OF MISSISSIPPI,

Respondent

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

BRIEF FOR RESPONDENT

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BRIEF FOR RESPONDENT

Statement of the Case

In view of the fact that counsel for petitioner has made a full statement of the facts and for the sake of brevity, we will forego making a restatement, save for this correction in counsel for petitioner's statement. On page 5 of petitioner's brief, it is stated:

"On his direct examination, the petitioner made no mention of any one other than the two plain clothes officers being present at the time he was struck and threatened; but upon cross-examination in answer to the District Attorney's question of whether the jailer was present, the petitioner stated: 'I don't recall, I am pretty sure he was in there'. (R. 16.)"

The petitioner's testimony is as follows:

"Q. Where was the jailer?

A. He was sitting in there.

Q. Mr. Young?

A. I don't know who he was.

Q. What was he doing?

A. I don't recall, I am pretty sure he was in there.

Q. Just sitting there at the desk?

A. Yes, sir." (R. 16)

Mr. J. A. Young, the jailer, testified that although the petitioner's face was familiar, he did not have any independent recollection of the petitioner being in jail at any specific time. (R. 20) Later in the examination the police department records were brought and from these records it was shown that the witness was on duty June 7, 1944, the date in question, (R. 25 and 26), and he testified that petitioner had never been struck in his office, (R. 24).

BRIEF AND ARGUMENT

POINT I

That: under the Facts Disclosed in the Transcript of Record, the Admission in Evidence of the Alleged Confession as Evidence of the Petitioner's Guilt in Order to Obtain a Conviction in the Trial Court Amounted to a Denial of Due Process of Law as Guaranteed by the Fourteenth Amendment to the United States Constitution.

A. The Supreme Court of the United States is not precluded by the verdict of the jury or the decision of the highest state court from determining whether a confession, used as evidence of the accused's guilt, was obtained under such circumstances of coercion and duress as to make its use in evidence a denial of due process of law.

Under the authorities cited by the petitioner, the above statement is no longer open to question. The evidence in the instant case upon the part of the State shows that the confession was free and voluntary and was not obtained by means of torture, violence, threats, fear, favor, prolonged questioning, or any other kind of coercion. Taking the testimony of petitioner in this case as true, the authorities cited by petitioner are not applicable, especially the cases of *Ashcraft v. State of Tennessee*, 322 U. S. 143, 88 L. Ed. 1192, 64 Sup. Ct. 921; *Brown v. State of Mississippi*, 297 U. S. 278, 80 L. Ed. 682, 56 Sup. Ct. 461; *Chambers v. State of Florida*, 309 U. S. 227, 84 L. Ed. 716, 60 Sup. Ct. 472; *Malinski v. State of New York*, 324 U. S. 401, 89 L. Ed. 1029; *Ward v. State of Texas*, 316 U. S. 547, 86 L. Ed. 1663, 62 Sup. Ct. 1139; *White v. State of Texas*, 310 U. S. 530, 84 L. Ed. 1342, 60 Sup. Ct. 1032.

The petitioner, although he testified to threats, (R. 13), further testified that he did not admit he did it, (R. 13, 16, 17). His testimony with reference to fear or duress is as follows:

> "Q. But you were not afraid enough to tell them you did it, isn't that correct?
>
> A. Yes, sir, that is right.
>
> Q. Then that afternoon, when you were down talking to Captain Rogers, who was treating you nice, then you got afraid and told it?
>
> A. I didn't tell him I did it. (R. 17)"

The trial court exercised due precaution on the preliminary inquiry as to the admissibility of the confession.

The rule in Mississippi as announced in the case of *Ellis vs. State*, 65 Miss. 44, 3 So. 188, 7 Am. St. Reporter 634, as to the admission of confessions in evidence is as follows:

> "Before a confession is received in evidence against a defendant in a criminal trial, it should be shown that it was voluntary, that is to say, made without the influence of hope or fear being exerted on the accused by any other person. Whether it was so made or not, is a preliminary matter for the court and not for the jury to determine. The jury have nothing to do with the competency of evidence; that is a question exclusively for the determination of the court. The court should decide in the first place, after investigation, whether a proposed confession shall be heard by the jury or not, and if it is deemed competent by the court; and is permitted to go to the jury, they are the exclusive judges of its weight

and value as evidence. When it is proposed to introduce in evidence, a confession of the accused against himself, the court should, upon a preliminary investigation, conducted out of the presence and hearing of the jury, if requested by the defendant, determine whether it is competent or not. If satisfied after hearing all the testimony pertinent to the inquiry, that the confession is admissible, it should go to the jury, but unless it plainly appears that it was free and voluntary — if there is a reasonable doubt against its being free or voluntary—it should be excluded from the jury. *Simmons v. The State*, 61 Miss. 243."

This rule has been consistently followed in this state. The court in the original opinion in the instant case, *Lee vs. State*, ... Miss. ....., 29 So. (2d) 211, transcript of record 30 and 31, said:

"Appellant was placed in jail and on the afternoon of the following day he was interrogated by two officers to whom (fol. 302) he confessed that it was he who had broken in the room and struck the victim three times while she was asleep in bed; that he watched and waited outside while she prepared for bed, and that his intent was to ravish. There is no question whether any coercion was used by these officers, but, on the contrary, defendant testified they had 'been nice to him' and had explained that his statement would be used against him and that such statement would be wholly voluntary. The details of the confession had never been suggested or known by anyone other than the defendant. When he was requested to sign the statement after its reduction to writing, he refused to do so stating that during the morning two officers in the room and presence of the jailer 'had treated him kind of bad'. The interview was thereupon closed and his signature was not insisted upon.

"The defendant testified that during the morning referred to, two plain clothes men had brought him to the office of the jailer and demanded that he confess the crime, and struck him twice with the warning that if he went 'down stairs and said he did'nt do it, it will be mighty bad for you.' The said detectives were not introduced and the jailer denied that this incident occurred. The trial judge thereupon admitted the confession into the record.

"The conduct of the two detectives, if true, would of course be indefensible and would warrant and receive our condemnation. Yet the issue of fact as well as credibility was for the trial judge upon such preliminary qualification, and we are not willing to disturb his conclusion. *Street v. State*, 26 So. (2d) 678."

In the Street Case it was held:

"A confession is admissible only when freely and voluntarily made, without expectation of any promised benefit, fear of any threatened injury, or exertion of any improper influences.

"Evidence of confession in order to be admissible must be so strong as to exclude every reasonable doubt that it was freely and voluntarily made, and not procured under threat of punishment, or promise of reward.

"Confessions induced by fear though not aroused by spoken threats, are involuntary and therefore inadmissible, and such fear may arise solely from conditions and circumstances surrounding the confessor." (Syllabus 1, 2, and 3, 26 So. (2d) 678.),

and with reference to the admissibility of the confession where the evidence was conflicting, the court said:

"We have repeatedly held that where evidence on the admissibility of a confession is conflicting, this

Court will not disturb the trial court's conclusion, unless clearly contrary to the evidence. *Stubbs v. State,* 148 Miss. 764, 114 So. 827; *Buckler v. State,* 171 Miss. 353, 157 So. 353; *Wohner et al. v. State,* 175 Miss. 428, 167 So. 622; *Jones v. State,* 58 Miss. 349; *Ellis v. State,* 65 Miss. 44, 3 So. 188, 7 Am. Rep. 634; *Brown v. State,* 142 Miss. 335, 107 So. 373; *Cooper v. State,* 194 Miss. 592, 11 So. 2d 207; *Parker et al. v. State,* 194 Miss. 895, 13 So. 2d 620. Under the proof in this case it is manifest from the record that the trial judge was justified in holding that the confession was freely and voluntarily made, to the exclusion of every reasonable doubt, uninfluenced by threat or promise of reward, or improper circumstances, and we find no error in its admission against appellant. The case of *Parker v. State, supra,* was appealed to the Supreme Court of the United States, and affirmed in 320 U. S. 705, 64 S. Ct. 69, 88 L. Ed. 413."

In the case of *Lisenba v. State of California,* 314 U. S. 219, 86 L. Ed. 166, Sup. Ct. 280, the court said:

"There are cases, such as this one, where the evidence as to the methods employed to obtain a confession is conflicting, and in which, although denial of due process was not an issue in the trial, an issue has been resolved by court and jury which involves an answer to the due process question. In such a case we accept the determination of the triers of fact, unless it is so lacking in support in the evidence that to give it effect would work that fundamental unfairness which is at war with due process.

"Here judge and jury passed on the question whether the petitioner's confessions were freely and voluntarily made, and the tests applied in answering that question rendered the decision one that also answered the question whether the use of the confessions involved a denial of due process; this not-

withstanding the issue submitted was not eo nomine one concerning due process. Furthermore, in passing on the petitioner's claim, the Supreme Court of the State found no violation of the Fourteenth Amendment. Our duty then is to determine whether the evidence requires that we set aside the finding of two courts and a jury and adjudge the admission of the confessions so fundamentally unfair, so contrary to the common concept of ordered liberty as to amount to a taking of life without due process of law.

"In view of the conflicting testimony, we are unable to say that the finding below was erroneous so far as concerns the petitioner's claims of physical violence, threats or implied promises of leniency."

With reference to coercion, the court further said:

"He exhibited a self-possession, a coolness, and an acumen throughout his questioning, and at his trial, which negatives the view that he had so lost his freedom of action that the statements made were not his but were the result of the deprivation of his free choice to admit, to deny, or to refuse to answer.

"The judgments are affirmed."

In *Buchalter v. New York*, 319 U. S. 427, 87 L. Ed., the court said:

"As we have recently said, 'it is not asking too much that the burden of showing essential unfairness be sustained by him who claims such injustice and seeks to have the result set aside, and that it be sustained not as a matter of speculation but as a demonstrable reality.'" (Citing *Adams v. United States*, 317 U. S. 269, 281, 87 L. Ed. 268, 275, 63 S. Ct. 236, 143 ALR 435.)

POINT II

That: The Decision of the Supreme Court of Mississippi in Refusing to Reverse the Trial Court for Having Allowed the Alleged Confession to be Introduced as Evidence of the Petitioner's Guilt in Order to Obtain His Conviction; and in Basing Such Refusal Solely upon the Ground that the Petitioner had Denied Making the Confession, is in Itself a Denial of Due Process of Law as Guaranteed by the Fourteenth Amendment to the United States Constitution."

Counsel for petitioner argues that this case is similar and should be governed by the case of *Brown vs. State of Mississippi*, 297 U. S. 278, 80 L. Ed. 682. In this case the evidence fully established that the confessions were obtained by coercion, where the court said that extreme brutality was resorted to. This case was affirmed by the Supreme Court of Mississippi on the ground of criminal procedure in that petitioner's attorneys failed to move to exclude the confession. (Petitioner's brief, pages 21 and 22.)

Counsel for petitioner further says:

> "Petitioner would also call to the Court's attention that the decision of the Supreme Court of Mississippi condones the use of a confession *known* by the prosecuting officers to be a result of coercion to be used at the trial to obtain a conviction of the accused; which petitioner submits has been held by this Court, in its previous decisions, to be a denial of due process of law. In *Mooney v. Holohan*, 294 U. S. 103, 112, 79 L. Ed. 791, 794, 55 S. Ct. 340, the Supreme Court held that the constitutional requirement of due process was not satisfied where a conviction was obtained by the presentation of testimony

known by the prosecuting officers to be false, saying: * * *"

This statement of counsel is not supported by the record. The only evidence that petitioner was struck or threatened is his own testimony, which is not supported by any other facts or circumstances. Counsel for petitioner in the trial court made no effort to locate or identify those two unknown officers who struck and threatened petitioner. To permit the defendant in the trial court to say that he was threatened by some unknown person, and his testimony not supported by any other facts or circumstances, would be putting too great a burden upon the State's attorney, as it would be impossible to rebut. Then, too, it is to be remembered in this case that the petitioner contended throughout that he never did admit he did it.

CONCLUSION

Under the record in this case and the authorities cited, it is submitted that the petitioner was denied none of his constitutional rights.

Respectfully submitted,
GREEK L. RICE, *Attorney General*
By RICHARD OLNEY ARRINGTON,
Assistant Attorney General

CERTIFICATE

I, Richard Olney Arrington, counsel for respondent, hereby certify that I have this day mailed postage prepaid, a true and correct copy of the above and foregoing brief to Honorable Forrest B. Jackson, counsel for petitioner, at his post office address at Jackson, Mississippi.

This is the 14th day of October, 1947.

RICHARD OLNEY ARRINGTON,
Assistant Attorney General

SUPREME COURT OF THE UNITED STATES

No. 91.—October Term, 1947.

Albert Lee, Petitioner, v. State of Mississippi. | On Writ of Certiorari to the Supreme Court of the State of Mississippi.

[January 19, 1948.]

Mr. Justice Murphy delivered the opinion of the Court.

This case involves a question of procedure under the due process clause of the Fourteenth Amendment of the United States Constitution. Does a defendant in a state criminal proceeding lose the right to contend that a confession was coerced because of his testimony that the confession was in fact never made?

Petitioner, a 17-year-old Negro, was indicted by a grand jury in Mississippi on a charge of assault with intent to ravish a female of previous chaste character. During the course of the trial, the state offered the testimony of two city detectives as to an alleged oral confession obtained by them from petitioner. Objection was made that this confession had been secured as the result of duress, threats and violence inflicted upon petitioner by two unidentified police officers several hours prior to the confession. The jury retired and a preliminary hearing was held before the trial judge as to the voluntariness of this confession. After various witnesses appeared, including the petitioner himself, the judge concluded that the confession was voluntary and that the testimony in relation thereto was admissible. This testimony proved to be the crucial element leading to the jury's conviction of petitioner. His sentence was fixed at 18 years in prison.

The Mississippi Supreme Court affirmed the conviction on appeal, rejecting petitioner's contention that the introduction of the testimony in question contravened his rights under the Fourteenth Amendment. It stated that the conduct of the two unidentified officers alleged to have struck and threatened petitioner was, if true, indefensible and warranted condemnation. But it felt that "the issue of fact as well as credibility was for the trial judge upon such preliminary qualification, and we are not willing to disturb his conclusion." — Miss. —, —, 29 So. 2d 211, 212.

This constitutional contention was treated quite differently by the court on the filing of a suggestion of error. It found that petitioner's testimony at the preliminary hearing that he had been threatened prior to making the confession was entirely undisputed in the record. But it also found that petitioner had steadfastly testified, both at the preliminary hearing and at the trial on the merits before the jury, that he did not in fact admit to the city detectives that he had committed the crime. The court then stated: "If the accused had not denied having made any confession at all, we would feel constrained to reverse the conviction herein because of the fact that his testimony as to the threat made to him during the forenoon by the plain clothes men is wholly undisputed, the jailer not having been asked about this threat, and having testified only that he was not struck by anyone in his presence after his arrest for this crime. But, we think that one accused of crime cannot be heard to say that he did not make a confession at all, and at the same time contend that an alleged confession was made under the inducement of fear." — Miss. —, —, 30 So. 2d 74, 75. The suggestion of error was accordingly overruled.

The incomplete record before us precludes our determination of whether petitioner did deny in the trial

court that he had confessed the crime.[1] But assuming that he did so testify, we cannot agree with the court below that he was thereby estopped from asserting his constitutional right to due process of law. The important fact is that the oral confession was introduced, admitted and used as evidence of petitioner's guilt. Not only may this confession have been influential in inducing the jury's verdict, but it formed an essential part of the evidentiary basis of the conviction now under review. His alleged denial of the confession went only to the original issue of whether he actually made the confession, an issue that is no longer open. That question was at most a disputed one; but the jury resolved the matter against petitioner and, like the court below, we accept that determination. The sole concern now is with the validity of the conviction based upon the use of the oral confession.

The due process clause of the Fourteenth Amendment invalidates a state court conviction grounded in whole or in part upon a confession which is the product of other than reasoned and voluntary choice.[2] A conviction re-

[1] The transcript of the trial on the merits is not before us. At the preliminary hearing on the voluntariness of the confession, the transcript of which is before us, petitioner stated in regard to the alleged confession: "I don't know what all he asked and all I said, but I didn't admit I did it." He also denied having confessed various details of the crime. Such testimony, however, might be construed as nothing more than a layman's inexact way of stating that his answers did not amount to a voluntary confession. But in the absence of the complete record, we express no opinion on the matter.

[2] *Brown* v. *Mississippi*, 297 U. S. 278; *Chambers* v. *Florida*, 309 U. S. 227; *Canty* v. *Alabama*, 309 U. S. 629; *White* v. *Texas*, 309 U. S. 631, 310 U. S. 530; *Lomax* v. *Texas*, 313 U. S. 544; *Vernon* v. *Alabama*, 313 U. S. 547; *Lisenba* v. *California*, 314 U. S. 219; *Ward* v. *Texas*, 316 U. S. 547; *Ashcraft* v. *Tennessee*, 322 U. S. 143,

sulting from such use of a coerced confession, however, is no less void because the accused testified at some point in the proceeding that he had never in fact confessed, voluntarily or involuntarily. Testimony of that nature can hardly legalize a procedure which conflicts with the accepted principles of due process. And since our constitutional system permits a conviction to be sanctioned only if in conformity with those principles, inconsistent testimony as to the confession should not and cannot preclude the accused from raising the due process issue in an appropriate manner. *White* v. *Texas*, 310 U. S. 530, 531–532. Indeed, such a foreclosure of the right to complain "of a wrong so fundamental that it made the whole proceeding a mere pretense of a trial and rendered the conviction and sentence wholly void," *Brown* v. *Mississippi*, 297 U. S. 278, 286, would itself be a denial of due process of law.

The judgment below must be reversed. Since the Mississippi Supreme Court upheld the conviction solely because it thought petitioner was not entitled to raise the constitutional issue, we remand the case to that court so that it may definitively express its views on that issue.

Reversed.

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327 U. S. 274; *Lyons* v. *Oklahoma*, 322 U. S. 596; *Malinski* v. *New York*, 324 U. S. 401; *Haley* v. *Ohio*, — U. S. —.

See, in general, Boskey and Pickering, "Federal Restrictions on State Criminal Procedure," 13 U. of Chi. L. Rev. 266, 282–295.